

**Feasibility of Converting Capacity Charges to Liens**  
**Report**

Prepared in accordance with  
Ordinance 18409, Section 113, Proviso P1

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**King County**

Department of Natural Resources and Parks  
Wastewater Treatment Division

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## **Introduction**

King County Ordinance 18409, Section 113, Proviso P1 (Ordinance) requires the King County Executive to transmit a report to the King County Council addressing the feasibility and potential benefits of converting capacity charges into liens. Specifically, the Ordinance requires the report to address the feasibility of converting capacity charges to liens on real property that are searchable to the public and visible on title reports and how that change will result in a more streamlined process with lower administrative costs.

## **Executive Summary**

The Wastewater Treatment Division (WTD) currently has the ability to place a lien on a property for a delinquent capacity charge account which is visible on a title report. Once a lien is placed on a property, the past due amount for the capacity charge is considered secure in that the past due amount plus any late fees and interest must be paid by the property owner prior to WTD releasing the lien which is necessary before a property can be sold.

In terms of a streamlined process and lowering administrative costs, WTD is currently working on a technology solution that will streamline the process and reduce the administrative overhead. This solution, the capacity charge automation project, will provide escrow agents with online access to immediately determine if a property has a capacity charge account owed and, if so, what is the remaining amount due. Because liens for delinquent accounts are visible on title reports, the escrow agent will know if there is a lien on a delinquent account and can utilize the new online system to quickly determine the amount owed, including late fees and interest, to release the lien.

## **Feasibility and Benefits of Converting Capacity Charges into Liens**

### *Background*

King County provides wastewater treatment services to 1.7 million residents, including most urban areas of King County and parts of south Snohomish County and northeast Pierce County. State law authorizes, and King County Code (KCC) requires, that each new sewer connection within the County's wastewater service area pay a capacity charge. This charge is levied on a property to recover the capital costs needed to serve new customers and is in addition to the monthly sewer rate. The charge is a monthly charge (\$60.80 per month for a residential customer equivalent connecting in 2017) that is billed quarterly to the customer for 15 years pursuant to KCC 28.84.050 O.4. and may be paid off at any time which would result in a discount.

### *Converting Capacity Charges to Liens on Real Property*

Under state law, WTD is authorized to file a lien on property only when a capacity charge is past due resulting in a delinquent account. This differs from property taxes in that property taxes are a lien on the property regardless of whether delinquent or not. RCW 84.60.010 (Priority of tax lien) provides that all taxes and levies "lawfully imposed or assessed are declared to be a lien respectively upon the real and personal property upon which they may hereafter be imposed or assessed."

The County derives its authority for the capacity charge from RCW 35.58.570 (Sewage facilities-Capacity Charge) which specifies the process for collection of the capacity charge is the same as that for water-sewer districts. Under RCW 57.08.081 (Rates and charges-Delinquencies), King County is authorized to establish the schedule for the lien process for delinquent accounts. Within this framework, the County adopted KCC 28.84.050 O.9. which provides the collection process for delinquent capacity charge accounts.

KCC requires WTD to provide a property owner or their representative a notice of intent to lien for a capacity charge account that is delinquent for more than 30 days. If the account remains delinquent after 15 days or suitable payment arrangements have not been made, the property is subject to lien. Once a lien has been filed on a property for a past due capacity charge, the lien will show up on a title report. A lien can only be released upon full payment of the cost for preparing and filing the lien, the past due capacity charge amount, and applicable interest and late fees.

The costs associated with WTD placing a lien on a property are:

- Filing fees at \$33 per account to file a lien plus \$33 to release the lien once the account is brought current
- Staffing resources (10 minutes per account at \$42/hr.)

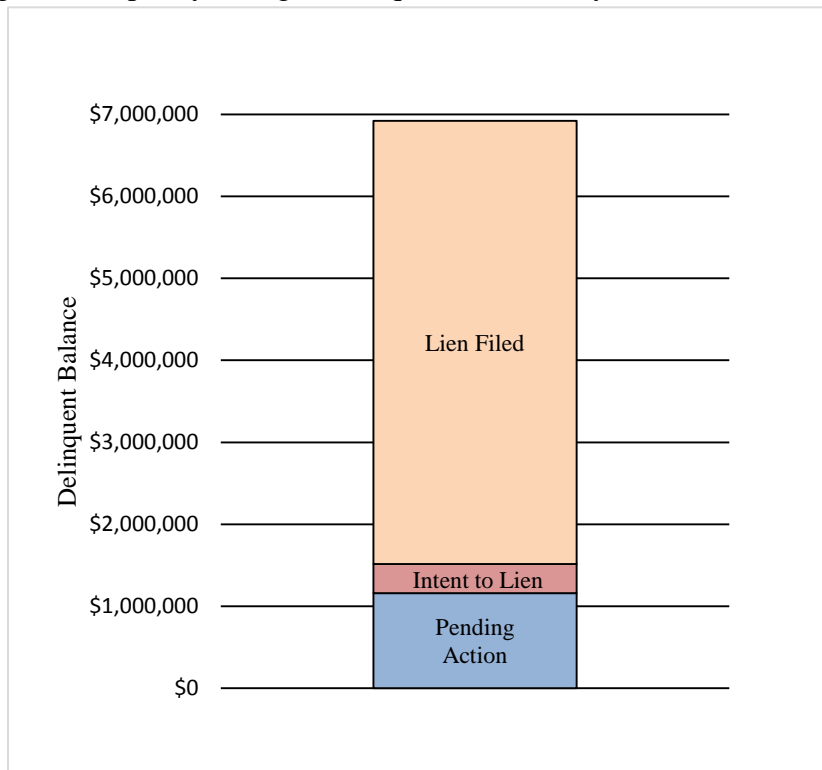
Converting non-delinquent capacity charge accounts to a lien on property, similar to property taxes, would require a change to RCW 35.58.570 (2) that specifies the charge is a monthly charge, RCW 57.08.081(3) that specifies a lien may be filed only after the account is delinquent, and KCC 28.84.050 O.4. that allows a capacity charge to be paid over a 15-year period. Capacity charge customers and escrow agents would still have to contact WTD to determine the capacity charge balance remaining for a specific parcel. This is because interest and late fees accrue from the filing of a lien; these amounts must be paid along with the past due amount to release the lien.

#### *Current Status of Capacity Charge Account Collection Efforts*

Since the inception of the capacity charge in 1990, WTD has administered 135,000 total accounts (including current active accounts and those that have been paid off). There were 65,000 active accounts at the end of 2016, meaning there is a remaining balance that will be paid over time. Of these existing 65,000 accounts, approximately 3,000 have a lien against the property for a past due capacity charge amount. On average, WTD has filed 865 liens annually for past due or delinquent capacity charge accounts over the past five years.

Currently, WTD has approximately \$7 million in delinquent capacity charge accounts. Figure 1 below shows delinquencies broken into three distinct categories of account maintenance.

Figure 1. Capacity Charge Delinquent Balance by Status



These categories represent the following:

- Pending Action: accounts that have not been sent a letter of intent.
- Intent to Lien: accounts that have been sent a notice of lien.
- Lien Filed: accounts with a lien on the property.

Accounts migrate to each category, sequentially, as conditions are met until a lien is filed. Once a lien is filed, WTD continues to monitor the account and will recover the past due amount when the property is sold or during a refinancing of the mortgage or deed of trust (i.e., property transaction involving a lender, borrower and trustee). When a property owner with a delinquent capacity charge account goes into default on a mortgage or deed of trust, before or during foreclosure proceedings, the lender will pay the past due capacity charge amount to WTD in order to release the lien. The primary focus of WTD's capacity charge employees working on collections is the 'Pending Action' category.

#### *Capacity Charge Automation Project*

In terms of continuing to improve collection efforts for the capacity charge program, WTD is implementing a capacity charge automation project to provide online access to account information which will result in a more streamlined process. This technology solution will provide the most up-to-date information on capacity charge accounts. Specifically, WTD is developing an automated system that will provide escrow agents online access to determine if a property has a capacity charge account and the remaining balance. If an account has a past due

capacity charge amount and there is a lien on the property, the automated system will provide the total amount due to bring the account current and release the lien.

Once the capacity charge automation project is fully implemented in mid-2018, WTD anticipates a significant reduction in administrative costs responding to escrow requests that totaled over 63,000 requests in 2016. The work load will then shift to filing liens on all delinquent accounts as quickly as possible, and setting up new customer accounts as the number of sewer connections continues to grow in this economy.

### **Conclusion and Next Steps**

Under state law, the capacity charge shall be a monthly charge and KCC allows payment over 15 years. Currently, state law authorizes the filing of a lien for the capacity charge only after the account is delinquent. KCC provides that before a lien is recorded, the account must be delinquent for more than 30 days and the County must have provided the property owner with a notice of intent to lien. A lien is visible on a title report, but still requires the escrow agent or property owner to contact WTD to determine the amount owed to release the lien including interest and late fees.

WTD has a capacity charge automation project underway that will streamline the process by providing real time information on whether there is a capacity charge owed on a property and the amount. This project will also reduce administrative costs associated with employees responding to escrow requests. Employee resources will then be redirected to securing past due amounts through the lien process.