SUBJECT: Proposed Amendments to Water and Wastewater Arrears Policy (FCS07053(a)) (City Wide)

RECOMMENDATION:

(a) That the revised Water and Wastewater Arrears Policy as outlined in Appendix A of Report FCS07053(a) be approved; and

(b) That all necessary amendments be made to the following City of Hamilton by-laws to reflect the City's current water and wastewater account collection practices:
   (i) the City's Waterworks By-law R84-026, as amended; and
   (ii) the City's Sanitary Surcharge and Wastewater Abatement By-law No. 03-272, as amended.

EXECUTIVE SUMMARY:

In April 2007, staff presented to the Audit and Administration Committee and recommended amendments to the Water and Wastewater Arrears Policy. The Committee identified factors to be reviewed and potentially incorporated and staff are presenting in FCS07053(a) the amended Policy for Committee’s approval.

The Municipal Act, 2001 (the “Act”) allows unpaid fees and charges for public utilities, which include water/or and wastewater arrears, to be placed on the tax roll for the property to which the public utility was supplied regardless of who the consumer is.
The City’s billing agent, Horizon Utilities Corporation (HUC) currently issues water and/or wastewater bills to specific individuals (e.g. property owners or non-owners such as tenants or property managers) based upon requests received by the applicable person. For convenience, non-owners are being referred to throughout this report as “tenants”.

Moving forward the City through the billing agent will advise property owners of their financial responsibilities as per the Municipal Act, 2001. Within HUC’s current water and wastewater account collection process, a Final Notice is mailed to the property owner 60 calendar days after the due date advising that any outstanding arrears will be transferred to their property tax account if payment is not received within 15 days. In the case where the bill has been directed to a person who does not own the property (e.g. a tenant or property manager), this Final Notice would represent the sole notification of a tenant’s arrears to the property owner as the tenant would have received the initial bill and any further notification requesting overdue payment.

Issues have arisen with the current mechanism of opening accounts and issuing invoices to tenants. Some property owners claim to not be aware of their legal responsibility for any water and/or wastewater bills that their tenant(s) may fail to pay. Additionally, some property owners may perceive that a sole outstanding arrears notification 60 days post due date is not timely to ensure that arrears payment is made to avoid the arrears being added to their property’s tax roll. The adoption of the recommended revised Water and Wastewater Arrears Policy seeks to improve property owner knowledge of water and/or wastewater legal responsibilities, as well as, enhance property owner (landlord) notification of a tenant’s water and/or wastewater arrears. The proposed improvements to the existing Policy are as follows:

- To ensure property owners are notified of tenant arrears in a direct and timely manner, the revised Water and Wastewater Arrears Policy contains a provision so that an arrears notification will be sent by HUC to property owners and account holders (if different from the property owner) both at 30 and 60 calendar days beyond the due date.

- In order to assist property owners to better understand the potential ramifications of their property’s water and/or wastewater bill being sent to another person a number of enhancements are proposed:
  - Going forward, on the initial request to open a water and/or wastewater account for a service address in a name different than that of the property owner, HUC will issue a letter to the property owner outlining a property owner’s responsibility for water and/or wastewater charges and a deadline to respond if the property owner has a concern with the opening of the account.
  - A bill insert outlining property owner’s responsibility for water and/or wastewater charges will accompany all water and wastewater customers’ HUC invoices in fall 2007.
SUBJECT: Proposed Amendments to Water and Wastewater Arrears Policy (FCS07053(a)) (City Wide) - Page 3 of 7

- Information regarding the property owner’s responsibility for water and/or wastewater charges will be available to customers on both the City’s and HUC’s internet websites.

The implementation of the recommended amendments is expected 60 days post Council approval of the revised Water and Wastewater Arrears Policy.

BACKGROUND:

With the passage of the Municipal Act, 2001 in January 2003, the Act allows unpaid fees and charges for public utilities to be placed on the tax roll for the property to which the public utility was supplied. Therefore, if there are any water and/or wastewater bills that are not paid on time (regardless of whom the consumer is), the City reserves the right to transfer unpaid balances to the property’s tax roll for collection.

As a customer service, the City has provided the opportunity for water and wastewater bills to be mailed to someone other than the property owner, such as a tenant or property manager. To do so, the non-owner would contact HUC who would accommodate a request to open the account in the name of that non-owner.

Within HUC’s current water and wastewater account collection process, a Final Notice is mailed to the property owner 60 calendar days after the due date advising that any outstanding arrears will be transferred to their property tax account if payment is not received within 15 days. In the case where the bill has been directed to a tenant, this Final Notice would represent the only notification from HUC of a tenant’s arrears to the property owner (landlord) as the tenant would have received the initial bill and further notification requesting overdue payment. If payment is not received, the outstanding arrears are transferred to the property owner’s tax roll.

The Audit and Administration Committee in March 2007 received a public delegation where a property owner (landlord) sought to appeal unpaid tenant water and wastewater arrears that were transferred to their property tax roll. Occasionally the property owner claims that they are unaware of their legal responsibility for any water and/or wastewater bills that their tenant(s) may fail to pay until they have received the Final Notice from HUC of a tenant’s arrears. Additionally, some property owners have made appeals on the basis that the issuance of a sole notification (Final Notice) of a tenant’s water and/or wastewater is not timely as it is issued 60 days past the payment due date.

At its meeting of April 18, 2007, the Audit and Administration Committee directed staff to review and prepare appropriate amendments to the Water and Wastewater Arrears Policy to re-instate the “Authorization Agreement to Bill Tenant”, such amendments to be brought back to Committee for consideration. As described later in this report, the re-instatement of this document is not being recommended at this time.

ANALYSIS/RATIONALE:

The current practice of providing the option of sending water and wastewater bills to a tenant at a property has been reviewed with respect to identifying reasons for continuing
this practice, reviewing how other Ontario municipalities bill for water and wastewater services and prior City practice.

Arguments in support of the current City billing approach are two-fold. Firstly, the current practice continues a service presently provided to property owners that allows them to manage their property’s administrative matters in a convenient fashion, particularly in the case of out-of-country property owners whose affairs are managed by an agent. Second, in cases where the tenant is authorized to receive the bill, it affords the consumer the opportunity to know of their consumption (and conservation) habits.

A drawback of allowing the bill to be sent to a tenant is the ongoing issue of the frequently changing name(s) referenced on the water and wastewater account associated with rental properties. Despite this disadvantage, providing an alternate billing opportunity has been a reasonable customer service practice, given that it has provided some benefit to some property owners and has not jeopardized the City’s collection of water and wastewater revenue to date.

A review of other Ontario municipal water and wastewater billing practices, found that once the legislation governing the delivery and billing of water and wastewater services changed, most jurisdictions maintained (or in some cases, reverted back to), a single billing option system for property owners by sending the bill solely to the property owner. There are few examples (Town of Midland) where at the property owner’s request an additional copy of the bill will be sent to a tenant but payment responsibility still resides with the property owner. The review did find two examples (City of Toronto and the City of Ottawa) that have offered the option for property owners to direct their water and wastewater bills to other persons providing authorization agreements are signed by the property owners. In the case of the City of Ottawa, they offer a third billing option for property owners of having the bill directed to a tenant where a copy of an executed valid lease is provided that indicates the tenant is responsible for paying the water and/or wastewater bill.

Prior to utilizing HUC as its water and wastewater services billing agent, the City did utilize an Owner/Tenant Agreement similar to that currently used by the City of Toronto and the City of Ottawa. This agreement originated with the Regional Municipality of Hamilton-Wentworth and pre-dated the legislative changes made with the passage of the Municipal Act in 2003. With the transition to HUC, the use of an authorization agreement was not maintained as a billing option for property owner to direct their water and/or wastewater bills to a tenant. As noted below in this report, given the proposed changes to be made to HUC’s process for opening accounts at a service address for non-property owners, it is not proposed that this form be re-instated at this time.

The recommended revised Water and Wastewater Arrears Policy does allow for the continuance of a customer service currently offered by the City and seeks to improve the current Policy as follows:

- To ensure property owners are notified of tenant arrears in a direct and timely manner, the revised Water and Wastewater Arrears Policy contains a provision so that an arrears notification will be sent by HUC to property owners and account
holders (if different from the property owner) both at 30 and 60 calendar days beyond the due date.

- In order to assist property owners to better understand the potential ramifications of directing their property’s water and/or wastewater bill to another person a number of enhancements are proposed:
  
  o Going forward, on the initial request to open a water and/or wastewater account for a service address in a name other that the property owner, HUC will issue a letter to the property owner outlining property owner’s responsibility for water and/or wastewater charges and a deadline to respond if the property owner has a concern with the opening of the account.
  
  o A bill insert outlining property owner’s responsibility for water and/or wastewater charges will accompany all water and wastewater customers’ HUC invoices in fall 2007.
  
  o Information regarding the property owner’s responsibility for water and/or wastewater charges will be available to customers on both the City’s and HUC’s internet websites.

**ALTERNATIVES FOR CONSIDERATION:**

The following section looks at different options for the City to consider for water and wastewater service billing:

1) **Adopt an Authorization Agreement to Bill Tenant** – Similar to the City of Toronto and the City of Ottawa, offer the option for property owners to direct their water and wastewater bills to other persons providing authorization agreements are signed by the property owners. This option was reviewed, however, in order to ensure full compliance with the respective privacy legislations that governs the City and HUC, it has been determined that adopting an authorization agreement option would be administratively cumbersome. Hence, improvements are being made to the current HUC telephone process for opening accounts at a service address to address the privacy issues noted above as well as the issue of property owner consent to the opening of the account. Therefore, this Authorization Agreement to Bill Tenant form option is not recommended at this time.

2) **Maintain current water and wastewater billing practice** – continue to allow non-property owners to contact the City’s billing agent to request a bill be sent to a tenant, as well as, continuing to provide a sole arrears notification to landlords with a Final Notice 60 calendar days beyond the due date. However, maintaining the current practice may mean that some property owners will claim to not fully understand their legal responsibilities for unpaid water and/or wastewater bills. Additionally, some property owners perceive tenant arrears notification is not occurring in a timely
fashion with the only notification occurring 60 days past due. Therefore, this option is not recommended.

3) **Issue water and wastewater bills solely to property owners** – most Ontario municipalities follow this practice and do not allow bills to be sent to another person. Though such a change would certainly streamline City water and wastewater billing business practices, there would be property owners who will be disadvantaged in managing their property’s administrative matters in a convenient fashion. To eliminate the alternate billing opportunity, that has been established for several years in Hamilton and which is seen as a reasonable customer service practice that has not jeopardized City water and wastewater revenue, may be perceived as eliminating a convenient and popular customer service. Additionally, if the actual consumer of water and/or wastewater services does not receive the bill, then the opportunity to know of their consumption (and conservation) habits would no longer formally exist. This option is not recommended.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial – No impact to the City’s collection of water and wastewater revenue.

Staffing – N/A

Legal – The City’s authority under the Municipal Act, 2001 to place unpaid water and wastewater amounts on the tax roll for a property, regardless of the consumer, is not affected by the recommendations contained in this report.

**POLICIES AFFECTING PROPOSAL:**

N/A

**RELEVANT CONSULTATION:**

Horizon Utilities Corporation
City Manager’s Office, Legal Services

**CITY STRATEGIC COMMITMENT:**

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- **Community Well-Being is enhanced.** ☑ Yes ☐ No
  The recommended revised Water and Wastewater Arrears Policy will support continuing a customer service for property owners in the City and help with the ongoing promotion of conservation participation by affording the opportunity to have the bill being sent to the actual water consumer.

- **Environmental Well-Being is enhanced.** ☑ Yes ☐ No
  Consumption of water may be reduced.

- **Economic Well-Being is enhanced.** ☑ Yes ☐ No
Hamilton's high-quality environmental amenities are maintained and enhanced. The following policy will encourage conservation and participation by water users, thereby reducing the level of water treatment and withdrawal of water by the City.

Does the option you are recommending create value across all three bottom lines?  
☑ Yes  □ No

Yes

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  
□ Yes  □ No

NA
I GENERAL

The Water and Wastewater Arrears Policy details the current account collection protocols including the timing of certain collection activities when accounts are unpaid and past due for water and/or wastewater services provided by the City.

II BACKGROUND

In May 2005, the City entered into a service agreement with Horizon Utilities Corporation (HUC) for the provision of water and wastewater billing, account collection and meter reading services. As a result, the Water and Wastewater Arrears Policy is administered by HUC. The initial term of this service agreement is until and including December 31, 2009 with a potential five year renewal.

III POLICY

Water and Wastewater Account Collection Process

1. Accounts are issued with a due date of 16 calendar days from the mailing date. Interest begins to be charged 6 calendar days after the due date compounded daily from the due date (current rate is 19.56% per annum).

2. Accounts that fall into arrears follow one of two collection protocols depending on the account’s arrears profile of the preceding 12 month period (refer to Table 1 and 2 below). These collection protocols apply for residential, commercial and industrial water accounts and provide:
   a. reminders to account holders of their financial obligation;
   b. ample opportunity for payment; and
   c. the City with tools needed to safeguard its water and wastewater revenue.
### Table 1: Water and Wastewater Account Collection Protocol 1 - Accounts without prior 12 month arrears history

<table>
<thead>
<tr>
<th>Progressive Steps</th>
<th>Circumstance</th>
<th>Response Outcome</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Account outstanding 10 calendar days beyond due date</td>
<td>“Past Due Notice” mailed to account holder on the 10th day</td>
<td>Payment of amount due or account remains outstanding</td>
</tr>
<tr>
<td>2</td>
<td>Account outstanding 17 calendar days beyond due date</td>
<td>“Interruption of Service Notice” is mailed to account holder on the 17th day</td>
<td>Payment of amount due or account remains outstanding</td>
</tr>
<tr>
<td>3</td>
<td>Account outstanding 30 calendar days beyond due date</td>
<td>“Arrears Notice” is mailed to account holder and the property owner (if different from the account holder) on the 30th day advising of arrears on account and request to pay.</td>
<td>Payment of amount due or account remains outstanding</td>
</tr>
<tr>
<td>4</td>
<td>Account outstanding 60 calendar days beyond due date</td>
<td>“Final Notice” is mailed to account holder and the property owner (if different from the account holder) on the 60th day advising of pending action if payment not received within 15 days.</td>
<td>Payment of amount due or account remains outstanding</td>
</tr>
<tr>
<td>5</td>
<td>Account outstanding 90 calendar days beyond due date</td>
<td>Outstanding amount transferred to property tax account roll.</td>
<td>City water and wastewater revenue secured</td>
</tr>
</tbody>
</table>

### Table 2: Water and Wastewater Account Collection Protocol 2 - Accounts with prior 12 month arrears history

<table>
<thead>
<tr>
<th>Progressive Steps</th>
<th>Circumstance</th>
<th>Response Outcome</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Account outstanding 10 calendar days beyond due date</td>
<td>“Interruption of Service Notice” is mailed to account holder on the 17th day</td>
<td>Payment of amount due or account remains outstanding</td>
</tr>
<tr>
<td>2</td>
<td>Account outstanding 30 calendar days beyond due date</td>
<td>“Arrears Notice” is mailed to account holder and the property owner (if different from the account holder) on the 30th day advising of arrears on account and request to pay.</td>
<td>Payment of amount due or account remains outstanding</td>
</tr>
</tbody>
</table>
Customer Notifications

**Past Due Notice** – mailed to account holder of accounts without prior 12 month arrears history, 10 calendar days after the due date. This notice provides a reminder to the account holder of the overdue status and request for payment within 7 calendar days.

**Interruption of Service Notice** – mailed to account holder 17 calendar days after the due date (21 calendar days for accounts with prior 12 month arrears history). This notice provides notice of account overdue status and requests immediate payment.

**Arrears Notice** – mailed to account holder and property owner (if different from the account holder) of all water and wastewater accounts 30 calendar days after the due date. This notification advises of the past due water and/or wastewater arrears and requests payment of outstanding amounts.

**Final Notice** – mailed to account holder and property owner (if different from the account holder) of all water and wastewater accounts 60 calendar days after the due date. This notification advising of the past due water and/or wastewater arrears and advises of a two week period for the payment to be made. HUC’s property owner database is updated on a monthly basis with the City’s Corporate Services Department’s (Taxation Division) records.

Disconnection of water and/or wastewater service for delinquent accounts does not occur under this Water and Wastewater Arrears Policy.

<table>
<thead>
<tr>
<th></th>
<th>Account outstanding 60 calendar days beyond due date</th>
<th>“Final Notice” is mailed to account holder and the property owner (if different from the account holder) on the 60th day advising of pending action if payment not received within 15 days.</th>
<th>Payment of amount due or account remains outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Account outstanding 90 calendar days beyond due date</td>
<td>Outstanding amount transferred to property tax account roll.</td>
<td>City water and wastewater revenue secured</td>
</tr>
</tbody>
</table>

|   | Account outstanding 90 calendar days beyond due date | Outstanding amount transferred to property tax account roll. | City water and wastewater revenue secured |
**Rental Properties**

Where a landlord-tenant relationship exists, the protocols outlined in Tables 1 and 2 above are followed. Where the tenant is named as the account holder, the Past Due and Interruption of Service notifications will be received by the tenant. The Arrears Notice and the Final Notice advising of the potential transfer of arrears to the property tax roll are sent to the landlord as the property owner and the tenant as the account holder.

**Authority To Transfer Arrears To Tax Roll**

The enactment of the Municipal Act, 2001 in January 2003, allows unpaid fees and charges for public utilities to be placed on the tax roll for the property to which the public utility was supplied, regardless of who the consumer is. Section 398 (2) of that Act provides that a municipality may, from January 1, 2003, and onwards, add unpaid public utility fees and charges, which include water and/or wastewater arrears, to the respective property’s tax roll.

Further to this, Ontario Regulation No. 581/06 identifies such fees or charges associated with the supply of water and sewage services as having ‘priority lien status’ as described in section 1 of the Municipal Act, 2001 such that, when added to a property tax roll because of payment default, these fees/charges:

(a) may be collected in the same manner as taxes on the property;

(b) may be recovered with costs as a debt due to the municipality from the assessed owner of the property at the time the fee was added to the tax roll and from any subsequent owner of the property or any part of it;

(c) are a special lien on the property in the same manner as taxes under subsection 349 (3) of the Municipal Act, 2001; and

(d) may be included in the cancellation price under Part XI of the Municipal Act, 2001 in the same manner as are taxes on the property, in the event that a Tax Arrears Certificate is registered on title of the property.

The City’s Waterworks By-Law R84-026, as amended, re-stated or re-enacted from time to time, also permits the collection of water and wastewater arrears in the same manner as property taxes by transferring arrears amounts to the tax roll.