

**CITY OF FORT SMITH
UTILITY DEPARTMENT
WASTEWATER COLLECTION AND TREATMENT SYSTEM (WCTS)
PRIVATE SERVICE LINE RULES AND REGULATIONS
EFFECTIVE JANUARY 1, 2017**

These Rules and Regulations are adopted as guidance for the administrative enforcement of the Ordinances of the City related to private service lines which convey wastewater to the WCTS. A private service line (sometimes referred to as a private lateral) is a sewer line not owned or operated by the City, but which conveys wastewater from a building to the WCTS.

On January 2, 2015, the City of Fort Smith in conjunction with the United States of America and the State of Arkansas lodged in the United States District Court for the Western District of Arkansas, Fort Smith Division, a Consent Decree in Civil Action No. 2:14-cv-2266-PKH. Paragraph 54 of the Consent Decree provides for a Private Service Line Defect Remediation Program component of the Capacity, Management, Operations and Maintenance (CMOM) program for the City's WCTS. Paragraph 54 of the Consent Decree is attached as Attachment 1 to these Rules and Regulations. The Private Service Line Defect Remediation Program Plan has been submitted for review and approval of EPA. The Plan is attached as Attachment 2. To encourage private service line repair or replacement, Appendix F to the Consent Decree provides a supplemental environmental project (SEP) which provides financial assistance to eligible residential users of the WCTS for private service line repairs and replacements. A copy of Appendix F of the Consent Decree is attached as Attachment 3 to these Rules and Regulations. Adoption of the Escrow Agreement and initial funding of the Escrow described in the SEP have occurred.

Among other provisions, the Ordinances of the City of Fort Smith require users of the WCTS to maintain and keep in good repair all connections (i.e., private service lines) to the

WCTS and to not discharge any stormwater, surface water, ground water, roof runoff or subsurface drainage into the WCTS. Those Ordinances include:

Fort Smith Code Section 25-11. The consumer of any utility service furnished by the city shall maintain and keep in good repair all connections, appliances and other apparatus installed and used in connection with such utility service.

Fort Smith Code Section 25-185(h). No person shall make connection of roof down spouts, exterior foundation drains, areaway drains, or other sources of surface runoff of groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

Fort Smith Code Section 25-186(a). No person shall discharge or cause to be discharged any stormwater, surface water ground water, roof runoff, subsurface drainage, non-contact cooling water or unpolluted industrial process waters into any sanitary sewer but such waters shall be discharged into such sewers as are specifically designated as storm sewer or into a natural outlet.

Fort Smith Code Section 25-4. Any authorized inspector of the city shall have free access at any time to all premises supplied with any utility service by the City for the purpose of examination in order to protect the utility services from abusive use.

Fort Smith Code Section 25-5. The City shall have the right to disconnect or refuse to connect or reconnect any utility service for any of the following reasons:

- (1) Failure to meet the applicable provision of law.
- (2) Violation of the rules and regulations pertaining to utility service.
- (4) Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise.

As a result of sewer system assessments (SSAs), other work completed pursuant to the Consent Decree and otherwise, the City may identify defective private service lines in need of repair or replacement. The City implemented the Private Service Line Defect Remediation Program (Plan) as approved by the EPA. These Rules and Regulations are adopted to establish the administrative procedures for implementation of the Plan in accordance with the above described Ordinances and other authority of the City.

Regulation 1 – Determination of Defect in Private Service Line.

1. A. Any determination of defect in a private service line allowing contribution of inflow or infiltration into the WCTS that could cause or contribute to SSOs (“Defect Determination”) shall be made by the Director of the Utilities Department of the City with assistance of assigned employees of the Department (the “Director”).

1. B. The Director shall receive and evaluate all reports produced by RJN Group, Inc., the City’s consultant performing SSA and CSSA activities, and other WCTS operation/maintenance efforts noting private service line conditions potentially allowing inflow or infiltration into the WCTS.

1. C. After receipt of information as noted in 1. B., the Director shall cause an investigation, including physical examination of the private service line site, to be performed. Inspection and/or reinspection of a private sewer service line may be scheduled or unscheduled and/or unannounced.

1. D. The Director shall make a Defect Determination based on the following criteria:
- i. Direct connection of private sewer service line to an unapproved water source, such as roof downspouts or surface drains;
 - ii. Direct inflow of surface water as a result of missing or damaged clean out caps or other sources of surface runoff;

- iii. Nature of defect discovered and its estimated contribution to sanitary sewer overflow;
- iv. Local conditions that contribute to surface water or ground water entering the defect discovered, such as, topography, soil saturation, configuration of the private sewer service line, and proximity of the defect discovered to water bodies;
- v. Observation of flows into and through the City's sanitary sewer collection system and sanitary sewer overflows;
- vi. Pending or ongoing construction projects that will mitigate infiltration and inflow; and,
- vii. Reoccurrence or frequency of discovering defects in the subject private sewer service line.

1. E. The Director's Defect Determination will be recorded in writing and dated and will provide a summary of the bases for determination and a statement of required remediation action.

Regulation 2 – Due Process Review.

2. A. Within ten (10) calendar days of receipt of the initial or a subsequent notification pursuant to the notification procedures below, any user shall have the right to request in writing a due process review of the Defect Determination and/or the required remediation action at a hearing before the City Administrator of the City. The written request for review hearing shall be delivered to the Office of the City Administrator or the Office of the Director of Utilities within the ten (10) day time limit identified.

2. B. The hearing shall be conducted within 15 business days of receipt of the written request for hearing.

2. C. At the hearing, the user, directly or through legal counsel, may submit information relevant to the Defect Determination or required remediation action together with a

request for relief, in whole or in part, from the remediation action directed in the notification being reviewed.

2. D. The City Administrator shall issue the written hearing determination within three (3) calendar days following the date of hearing. The Administrator's determination shall be the final City administrative action regarding the issue.

2. E. Once a Defect Determination is final, any reviewed decision is not subject to further review in a subsequent hearing regarding additional City directed remediation action.

2. F. Both property owners and tenants of the subject real property shall be considered a "user" for the purposes of this Regulation 2.

Regulation 3 – SEP Notification and Notification Process.

3. A. All Defect Determination notices regarding residential properties shall include notice of the City's SEP which may provide financial assistance to eligible users for required private service line repair or replacement. The notices provided for in this regulation are supplemental to any SEP notifications issued pursuant to the City's SEP Notification Process Statement.

3. B. All notifications shall be in writing issued to the owner of the subject real property and to any tenant of the subject real property making use of the private service line connection to the WCTS, unless the users identify a single contact person for the notification and enforcement process, in which case all notification shall be issued to that identified contact.

3. C. Notifications shall be physically delivered by an employee of the City to an adult at the user location and/or mailed in a manner to provide proof of delivery to the user location.

Regulation 4 – Initial Notification.

4. A. Subsequent to Defect Determination, the Director shall cause to be issued to the user whose private service line has been determined to be defective a written initial notice containing the following:

- (1) The physical or street address location of the subject private service line;
- (2) The source of initial information to the City of possible private service line defect (e.g., SSA report with date and description of information provided);
- (3) A summary of the bases for and date of Defect Determination and required remediation action;
- (4) A time limit (less than three (3) months) for repair of the subject defect which does not require replacement of the private service line. In the event replacement of the private service line is required, a statement that replacement must be completed within thirty (30) months of the Defect Determination date (unless other time period is provided pursuant to the SEP);
- (5) The reserved right of the City to pursue all lawful remedies including initiation of a criminal action or to discontinue water/sewer service in the event of non-compliance;
- (6) The right to request a due process hearing before the City Administrator pursuant to Regulation 2.

Regulation 5 – Response to Initial Notification.

5. A. Prior to the expiration of six (6) months from the date of Defect Determination, the Director shall make a determination as to whether the previously noticed defect has been remediated.

5. B. If a defect requiring repair and not replacement of the private service line has not been completed, the Director shall issue a supplemental notice (final notice) identifying the required repair, identifying a time deadline (not greater than thirty (30) calendar days) for completion of the repair and stating the enforcement action to be taken pursuant to Regulation 5.D., without further notice, if the repair is not completed within the stated time deadline.

5. C. If replacement of the private service line was required by the initial notice and the Director determines replacement has not been completed, the Director shall cause to be issued a supplemental notice (second notice), prior to twelve (12) months from the date of Defect Determination, repeating the information of the initial notice and encouraging completion of the replacement.

5. D. The Director shall cause enforcement action to be taken with reference to any repair not timely accomplished following final notice pursuant to 5.B. above. The enforcement will be termination of water/sewer service to the subject property. Subject to due process hearing rights, the Director shall timely proceed with the noticed enforcement action.

Regulation 6 – Response to Subsequent Notices (Replacement).

6. A. Subsequent to twelve (12) months from the date of Defect Determination requiring replacement of a private service line, the Director shall determine whether the private service line has been replaced and, if not, the Director shall cause to be issued, prior to eighteen (18) months from the date of Defect Determination, a supplemental notice (third notice). In addition to providing the information contained in the previous notices, the third notice shall state that if the Defective Condition has not been remediated by a date thirty (30) months (or longer time period provided pursuant to the SEP) subsequent to the date of Defect Determination, the City shall cause to be initiated a criminal action seeking the recovery of a

penalty of \$1,000.00 for the initial day (and \$500.00 for each continuous day) that the Defective Condition is not remediated.

6. B. If remediation does not occur during the pendency of, or as a result of the criminal action, the Director shall cause to be issued a final notice that the City will, subsequent to ten (10) days from issuance of the final notice, terminate water/sewer service to the subject property. Subject to due process hearing rights, the Director shall timely proceed with the noticed enforcement action.

Regulation 7 – General

The City reserves all rights to legislatively and administratively determine SEP funding (not mandated by the Consent Decree), availability of City funded construction projects which may or may not provide private service line defect remediation, and the periods of time, geographic availability and eligibility requirements of any City assistance to private service line defect remediation. The existence of a SEP program or other assistance with reference to private service line defect remediation creates no right of other assistance to assisted users, no right to the same or other assistance to other users, and no right to assistance during different time periods.