MEMO

TO: **Mabton City Council**

FM: **James C. Carmody**

RE: **Water Connection Charges – (More than one premises supplied through 1 meter)**

DT: **April 26, 2016**

Mabton City Council tabled action on proposed Ordinance No. ~~20016~~ 2016-1077 related to provision of municipal water and sewer services to properties located outside the municipal boundaries. The action was tabled at the request of Richard Galland because of a question regarding water charges for properties served by a single water meter but including multiple dwelling units. City Council requested an opinion on applicable ordinance requirements related to water charges where property is served by a single water meter but includes multiple dwelling units.

STATEMENT OF ISSUE

What is the procedure and ordinance requirements for charges related to properties served by a single water meter but containing multiple dwelling units. The issue specifically relates to the proper charges under the ordinance where one or more of the units served by a single water meter are vacant and unoccupied.

LEGAL OPINION

Mabton Municipal Code specifically addresses water charges where multiple dwelling units are served through a single water meter. MMC ~~14~~ 13.04.440 provides, in part, as follows:

> Where more than one individual consumer is supplied with water through one meter, the bill shall be computed as though there was a separate metered service for each individual consumer and each used an equal quantity of water consumed. *There shall be no deductions for vacant premises unless service for that premises has been previously disconnected pursuant to Section 13.04.480.* For purposes of this section, each one-family dwelling unit and each dwelling unit in a two-family dwelling or in a multiple dwelling shall constitute one individual consumer. .... .

(Italics added). Even though a property is served by a single water meter, the ordinance clearly directs that each dwelling unit shall be treated as a separate consumer and will be responsible for an equal share of water consumed. The ordinance goes on to prohibit any "deductions for vacant premises" unless the

property owner has previously requested that the vacant unit be "disconnected pursuant to Section 13.04.480." In the absence of a "disconnection" of water service following notice and payment of required fee, there shall be no deduction for vacant premises.

MMC 13.04.480 provides as follows:

> Even though property served may be unoccupied for more than one metered month, a minimum charge shall be owing unless a request from the property owner or consumer for disconnection together with the fee therefore has been received prior to the first month.

The disconnection of a vacant unit requires (1) a request from the property owner or consumer for disconnection, and (2) payment of the fee for disconnection. The applicable disconnection fee is designated as "Water Connection Shut Off Fee" and the specified fee is $15.00 for shut off. Additional charges are made for turning the service back on to the premises. *Merriam-Webster Dictionary defines "disconnect" as a transitive verb "...to severe the connection of or between ... ".* The simple definition of "disconnect" is "... to separate (something from something else): to break a connection between two or more things; ... to stop or end the supply of electricity, water, gas, etc., to (something, such as a piece of electronic equipment); ... to stop or end the supply of (electricity, water, gas, etc.)." A disconnection requires that the supply of water be stopped with respect to the vacant unit.

It is asserted that the City is estopped from enforcing the clear and unambiguous ordinance because of prior interpretations or practices with respect to water service through a single meter to multiple dwelling units. The courts have been clear that municipalities may not be estopped in properly enforcing ordinances when acting in a governmental capacity. *City of Mercer Island v. Stinmann*, 9 Wn. App. 479 (1973) ("a municipality may not be equitably estopped by the original misfeasant or malfeasant act of its officers or agents in having issued an permit contrary to the plain mandate of a zoning provision").

It has been held that a municipality cannot be estopped from collecting multiple connection fees where an ordinance specifically requires such collection. Actions of city officials which directly contravene city ordinances concerning the collection of connection charges are ultra vires and cannot preclude the city from collecting connection fees. *Guthrie v. City of Mossy Rock*, 91 Wn. App. 1062 (1998) (unpublished opinion). In *Guthrie* a developer paid connection fees under an ordinance which appeared to allow only one water and one sewer hookup to connect an entire mobile home park. Before the service was connected the city changed its ordinance to require separate hookups for each residence in the mobile home park. The court held that the city was not estopped, i.e. precluded, from enforcing its unambiguous ordinance which required separate connection charges for each residence.

CONCLUSION

It is our opinion that the City cannot waive water and sewer charges based solely on unit vacancies. We found no basis in the code for waiver or adjustment of water and sewer charges. Prior incorrect interpretations do not estop the City from enforcing clear and unambiguous ordinance provisions.