City Council Report

Date: May 16, 2016
To: City Council
Through: Kari Kent, Assistant City Manager
From: Dan Cleavenger, Water Resources Department Director
Subject: Recommendation – Changes to the City's Backflow Protection Program

Strategic Initiatives

PURPOSE AND RECOMMENDATION

The purpose of this report is to provide Staff's recommendations for changes to the Mesa City Code to improve the City's Backflow Protection Program ("Program").

Staff recommends the following changes to the City Code and Program:
- Revise the City Code to reflect the "Backflow Late Compliance Fee" to be imposed on parties who fail to provide the City with records of annual inspection of backflow devices in a timely manner,
- Revise and update the provisions that provide for termination of water service in the event of violations of backflow requirements, and
- Revise and update the provisions regarding the initiation of civil code violations (for late compliance and other backflow violations) and associated civil sanctions, as well as criminal misdemeanor complaint (for habitual offenders).

These changes would be effective 30 days following adoption by Council.

BACKGROUND AND DISCUSSION

Backflow devices are required for commercial and industrial connections to the City's distribution system to protect the public water supply from contamination. Annual testing of the backflow assemblies is required by City Code to ensure they are in proper working order; however, some customers do not comply with this requirement. In 2013, Council approved a backflow inspection fee (the renaming of this fee to "Backflow Compliance Late Fee" is a pending item tentative on the May 16, 2016 agenda) to encourage compliance. This fee has proven difficult to implement as originally envisioned and has not been collected, in part due to concerns over City personnel performing work on privately owned backflow assemblies. Staff is now recommending changes to the City Code to improve the Program, as set forth below.

First, staff recommends changes to the City Code to adopt the revised "Backflow Compliance Late Fee." Under the revised City Code, Customers would now have ten days from their annual device test date to provide the City with proof that 1) their device is functioning properly or 2) the device has been scheduled to be repaired or replaced. If their device is to be repaired or replaced, a certified tester must retest the assembly and submit the additional test results to the City within ten days. Failure to meet either ten-day deadline would result in the late fee being charged to the Customer. The late fee, as currently set out in the Utility Rate Schedule, is one hundred dollars ($100.00). This late fee will allow for the recovery of the additional costs resulting from efforts invested by the Water Resources Department ("Department") to track and follow up on non-compliant Customers, provides an incentive for Customers to comply and ensure the municipal water system is protected, and is proportionate to the risks posed to the water system and public health presented by the violation.

Currently, water service to any Customer may be terminated by the Department if it is found that a backflow device is not in place as required, has been removed or bypassed, has not been properly maintained or is malfunctioning, or if unprotected cross connections exist on the premises. Staff is recommending that failure to comply with the annual testing requirements also serve as a reason for service termination as there would be no way to know if the device is properly protecting the water distribution system. Under the City Code as revised, the Department is also provided clear authority to immediately terminate service where there is an imminent hazard to the health and safety of the public supply. Other edits to improve and clarify the Section on Termination are also included. Services would not be restored until such conditions or defects are corrected and all penalties and other fees and charges are paid, or a hearing results in a finding of no violation.

Staff is also recommending that the Department Director or Inspectors, or such other persons as the City Manager may designate, be authorized to commence a civil code violation in the Mesa Municipal Court using the procedures outlined in Title 1, Chapter 27 of the Mesa City Code. Civil Penalties in the amount of up to one thousand dollars ($1,000.00) per day, per violation could be imposed by the Court. The Mesa City Prosecutor would also be authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders.

ALTERNATIVES

1) Status quo; no change. This is not recommended due to challenges with enforcement of the program and the risk of contaminating the water distribution system.
2) Modify the City Code to include the Backflow Late Compliance Fee, improve termination of service options, allow the Department to pursue civil sanctions, and allow for misdemeanor prosecution of repeat offenders.
3) Provide Staff direction for an alternative method of revising the Backflow Program.

FISCAL IMPACT

Implementation of Staff's recommendations would have a nominal fiscal impact to the City:
- The Water Resources Department does not anticipate that civil sanctions will be a significant source of revenue for the Department.
- The Backflow Late Compliance Fee will be a reasonable recovery of the additional costs and efforts invested by the Department to track and follow up on non-compliant customers, provides an incentive for customers to comply and ensure the municipal water system is protected, and is otherwise proportionate to the risks presented to the public water system and health.

Implementation of Staff's recommendations would impact non-compliant customers through a fee of one hundred dollars ($100.00), and also potentially subject them to civil penalties as imposed by the Court (the revised City Code expressly includes authorization to the Department to seek voluntary compliance in the most efficient and effective manner under the circumstances).