

**ORDINANCE NO. 6 0 8 4**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ADDING A NEW CHAPTER 13.52 TO THE AUBURN CITY CODE AND AMENDING SECTION 13.06.210 OF THE CITY CODE PROHIBITING DECEPTIVE AND FRAUDULENT PRACTICES RELATED TO THIRD PARTY BILLING FOR MASTER METERED OR OTHER UN-METERED UTILITY SERVICES PROVIDED TO MULTI-FAMILY AND MULTI-DWELLING UNIT BUILDINGS

WHEREAS, in a number of instances across the City's utility service areas, utility services provided to residential multi-family and multi-dwelling unit buildings in the City of Auburn utility service areas are billed by the utility through a master metered or on an un-metered basis, and the landlord or property owner is responsible for paying the utility for the charges for the various dwelling units combined in such bills; and

WHEREAS, historically, most landlords in the City of Auburn's utility service areas have fairly applied billing practices to recoup the amounts they have paid for such utility services in the monthly rental rates they charge their tenants; and

WHEREAS, there have, however, been some residential landlords and property owners who are recouping utility charges by billing tenants for master metered or un-metered utility services, through practices that may not be fair to the tenants; and

WHEREAS, some of these billing demands on tenants have come separately, whether from the landlords and property owners themselves or through a third party agent, instead of including such costs within the monthly rent, and some such billing demands have come without prior notice or agreement and without explanation of the methods used to allocate the utility bills; and

WHEREAS, certain bills for utility services are being sent to tenants by third parties that may be required to be, but are not, licensed and/or registered to do business in the State of Washington or the City of Auburn; and

WHEREAS, certain bills include unreasonable and unjustified administrative fees and excessive late fees and penalties, or do not adequately inform tenants of the basis of any fees or penalties imposed; and

WHEREAS, provisions requiring disclosure of significant information concerning billing of master metered or un-metered utility service would enable tenants to better understand the costs and allocation methods reflected in the utility bills and would more accurately reflect the actual costs of utilities; and

WHEREAS, tenants and occupants of individual units currently have little or no recourse by which they can dispute or inquire about bills for master metered or un-metered utility service or can challenge billing practices, and are being deprived of the benefit of consumer protection laws; and

WHEREAS, the City Council intends to continue monitoring the impacts of billing of master metered or un-metered utility service, to consider the requirement of sub-metering and other regulations that address the concerns identified herein, and to review whether the provisions of this ordinance have provided a sufficient degree of consumer protection for tenants and reasonable requirements for landlords;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON DO ORDAIN AS FOLLOWS:**

**SECTION ONE      ADDITION OF NEW CHAPTER TO CITY CODE.** A new Chapter 13.52 is added to Auburn City Code to read as follows:

Chapter 13.52  
THIRD PARTY BILLING REGULATION

Sections:

- 13.52.010 Short title and purpose.
- 13.52.020 Definitions.
- 13.52.030 Prohibited billing practices.
- 13.52.040 Billing requirements.
- 13.52.050 Dispute resolution and remedies.

13.52.010 Short title and purpose.

A. This chapter may be known and cited as the "Third Party Billing Regulation." The general purpose of this chapter is to prevent landlords, either themselves or through a third party billing agent, from billing tenants for master metered or other un-metered utility services without proper notice and disclosure of billing practices to tenants, and to protect tenants from deceptive or fraudulent billing practices, and to these ends the provisions of this chapter shall be liberally construed.

B. Nothing in this chapter shall be construed to prevent a landlord from including a tenant's cost of master metered or other un-metered utility services within the rent set forth in a rental agreement, and the practice of including such cost within a tenant's rent shall not be considered a billing practice or methodology affected by the provisions of this chapter.

13.52.020 Definitions.

As used in this chapter, the following definitions apply:

A. "Billing entity" means the landlord or third party billing agent, as the case may be, responsible for billing residential multi-unit building tenants for master metered or other un-metered utility service.

B. "Disclosure" means providing tenants with complete and accurate written information in a clear, concise, and understandable manner in all notices required under this chapter and on each bill presented from the billing entity to tenants.

C. "Landlord" means a "landlord" as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the Residential Landlord Tenant Act of 1973 ("RLTA") in effect at the time the rental agreement is executed, and shall also mean the owner of a mobile home park. At the time of passage of the ordinance codified in this chapter, RLTA defined "landlord" as "the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part," and includes "any person designated as representative of the landlord," including the operator of the residential facility and/or mobile home park, representing, working for and on behalf of the owner/landlord as defined herein.

D. "Master metered utility service" means a utility service supplied to more than one (1) unit in a multi-unit building and measured through a single inclusive metering system.

E. "Methodology" refers to any method, technique, or criterion used to apportion to tenants charges billed to the landlord by the utility for master metered utility service or un-metered utility service, including but not limited to Ratio Utility Billing Systems, installation of sub-metering, and hot water metering.

F. "Multi-unit building" refers to a residential building or group of buildings (which may include a mobile home park) with three (3) or more tenant units with a master metered utility service or un-metered utility service, such as solid waste collection, that is provided to the building or group of buildings as a whole.

G. "Personally identifiable information" means specific information about a tenant, including but not limited to the tenant's social security number, birth date, mother's maiden name, banking data or information, or any other personal or private information.

H. "Ratio Utility Billing System" or "RUBS" refers to any methodology by which the cost of master metered or other un-metered utility service provided to tenants and common areas of a multi-unit building is apportioned to tenants through the use of a formula that estimates the utility usage of each rental unit in the building based on the number of occupants in a unit, number of bedrooms in a unit, square footage of a unit, or any similar criterion.

I. "Rental agreement" means a "rental agreement" as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the Residential Landlord Tenant Act (RLTA) in effect at the time the rental agreement is executed, and is deemed to include any month-to-month tenancy arrangement, whether written or oral. At the time of the passage of the ordinance codified in this chapter, the RLTA defined "rental agreement" as "all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit."

J. "Service charge" refers to any charge or fee imposed by the billing entity to cover the costs of providing or administering the billing practices, regardless of the label applied to such charge or fee.

K. "Tenant" means a "tenant" as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the RLTA in effect at the time the rental agreement is executed, and shall also mean a tenant of a mobile home park. At the time of passage of the ordinance codified in this chapter, the RLTA defined "tenant" as "any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement."

L. "Billing practices" refers to the practices of a landlord or third party billing agent, as defined herein, that bills residential multiunit building tenants for the purpose of apportioning master metered or other un-metered utility services provided to the building(s) as a whole, either by directly sub-metering tenants'

usage or by otherwise apportioning such utility services among tenants, and also refers to any practices related thereto, including but not limited to collecting, using or disclosing tenants' personally identifiable information (other than name and address), attempting to collect unpaid amounts from tenants, verifying tenants' credit, and reporting unpaid balances to credit reporting agencies.

M. "Third party billing agent" refers to any entity retained or authorized by a landlord to bill tenants for master metered or other un-metered utility service on behalf of and as the agent of a landlord.

N. "Utilities" or "utility service(s)" refers to water, sewer, storm water, and solid waste services.

#### 13.52.030 Prohibited billing practices.

A. It is a deceptive and fraudulent business practice for any landlord or third party billing agent to bill tenants separately for utility services except as permitted in this chapter.

B. It is a deceptive and fraudulent business practice for a landlord to engage, retain, or authorize a third party billing agent who does not comply with the requirements of this chapter, and a landlord shall be liable for the actions engaging, retaining, or authorizing a third party billing agent who does not comply with the requirements of this chapter.

C. As of the effective date of this ordinance, no landlord may disclose to a third party billing agent a tenant's personally identifiable information under any circumstances, provided, however, that nothing in this chapter shall prevent a landlord from disclosing a tenant's name and address to a third party billing agent for the purpose of engaging in permitted billing practices.

D. A third party billing agent who prior to the effective date of this ordinance has obtained any tenant's personally identifiable information (other than name and address) shall not use, sell, convey, or otherwise disclose that personally identifiable information to any other person, except as expressly permitted in this chapter, and must destroy all such information upon a tenant's request, when the tenancy terminates and the account is paid, or when the landlord terminates the third party billing agency relationship.

E. No third party billing agent may inform a credit reporting agency of a claim against a tenant except as expressly permitted in RCW Chapter 19.16, regardless of whether the third party billing agent is licensed by the state pursuant to that chapter.

#### 13.52.040 Billing requirements.

A. A landlord may, itself or through a third party billing agent, bill tenants for master metered or other un-metered utility services, including electric service provided to tenants of multi-unit buildings, provided that the following requirements are met:

1. Notice. Billing practices may be adopted only upon advance written notice to a tenant as part of a new or renewed rental agreement. Tenants must receive such written notice at least 90 days before expiration of their rental agreements, or, in the case of month-to-month tenancies, at least 90 days before any such billing practices may become effective. Notwithstanding the foregoing two sentences, if billing practices are already in place at the time the ordinance codified in this chapter becomes effective, written notice must be given within 30 days of the effective date of the ordinance codified in this chapter.

2. Methodology. The notice required under section A.1 above must include a copy of this chapter and a detailed written disclosure of the methodology used by the billing agent to allocate the charges to each tenant, including the methodology used to allocate utility services for common areas of the building, along with all other terms and conditions of the billing arrangement. If sub-metering is used, the notice required under section A.1 shall also include descriptions of the location of the sub-meter and of the access requirements, if any, required by the landlord for access to tenant units for sub-meter installation, reading, repair, maintenance, or inspections, including removal of the sub-meter for testing, consistent with the provisions of RCW 59.18.150 of the RLTA. An additional written notice must also be given at least 30 days prior to the due date of the next rental payment in order to implement a change in billing agents, apportionment methodology, fees, or other terms and conditions of the billing arrangement.

3. Posting of Information

(a) In addition to the written notification required by subsection A.2, above, any landlord employing billing practices shall post in a conspicuous public space in the interior of the building copies of the three most current utility bills for master metered or other un-metered utility services provided to the building as a whole that are included in the bill sent to the tenant, together with a written description of the methodology used to allocate each such utility service and a copy of this chapter. The landlord shall also post the provisions of this Ordinance in a conspicuous public space in the interior of the building.

(b) Where such postings are physically impracticable due to the absence of a suitable conspicuous public space, a landlord may satisfy the posting requirements by hand-delivering or mailing to each of the tenants a paper copy of the written notification required by subsection A.2, together with a written description of the methodology used to allocate each such utility service and a copy of this chapter and a copy of the provisions of this Ordinance. In lieu of posting the three most current utility bills for master metered or other un-metered utility services provided to the building as a whole that are included in the bill sent to the tenant, the landlord must make such utility bills available upon request within 5 business days and must inform tenants in the written notification required by subsection A.2 of the method by which they may request such utility bills.

(c) Landlords shall keep bills for master metered or other un-metered utility services on file in the building for at least two years and shall make such bills available to tenants for inspection and copying upon request. Where it is physically impracticable to keep such bills on file due to the absence of a suitable office or other storage space, a landlord may store the bills in another location and must make such bills available within 5 business days of receiving a request from a tenant.

4. Limitations on Charges. The total of all charges for any utility service included in the bills sent to all units cumulatively shall not exceed the amount of the bill sent by the utility itself for the building as a whole, less any late charges, interest or other penalties owed by the landlord, with the exception of the following, which may be included in each bill covering an independent unit within the multi-unit building:

(a) A service charge of no more than two dollars (\$2.00) per utility per month, not to exceed a cumulative service charge of Five dollars (\$5.00) per month for all the utilities included in any bill.

(b) Late payment charges of no more than five dollars (\$5.00) per month plus interest at a rate not to exceed 1% per month, which late payment charge shall not accrue until at least 30 days after the tenant receives the bill.

(c) Insufficient funds check charges for dishonored checks, not to exceed twenty-five dollars (\$25.00) per dishonored check.

5. Licensing of Third Party Billing Agents. Any third party billing agent must be properly registered and licensed to do business in the State of Washington and City of Auburn and must be in compliance with all applicable Washington state and Auburn laws and regulations, and all applicable Washington and Auburn license identification numbers, if any, must be disclosed upon request.

6. Content of Bills. Each billing statement sent to a tenant by a billing entity must disclose all required information in a clear and conspicuous manner and at minimum must:

(a) Include the name, business address and telephone number of the billing entity;

(b) Identify and show the basis for each separate charge, including service charges and late charges, if any, as a line item, and show the total amount of the bill;

(c) If the building units are sub-metered, include the current and previous meter readings, the current read date, and the amount consumed (or estimated to have been consumed if Auburn has provided the landlord with an estimated bill);

(d) Specify the due date, the date upon which the bill becomes overdue, the amount of any late charges or penalties that may apply, and the date upon which such late charges or penalties may be imposed;

(e) Identify any past due dollar amounts;

(f) Identify a mailing address and telephone number for billing inquiries and disputes, identify the entity responsible for resolving billing inquiries and disputes and its business hours and days of availability, and describe the process used to resolve disputes related to bills as set forth in this chapter; and

(g) Include a statement to the effect that "this bill is from [landlord name] and not from Auburn Public Utilities."

7. Protection of Personally Identifiable Information.

(a) A third party billing agent who prior to the effective date of this ordinance has obtained a tenant's personally identifiable information shall take such actions as are necessary to protect such personally identifiable information and to prevent its use or disclosure except as expressly permitted in this chapter.

(b) A third party billing agent who prior to the effective date of this ordinance has obtained a tenant's personally identifiable information may disclose such personally identifiable information only to the extent necessary to render its billing services.

(c) To the extent required by federal, state, or local law, a billing entity may disclose personally identifiable information in its possession (i) pursuant to a subpoena or valid court order authorizing such disclosure, or (ii) to a governmental entity.

8. Estimated Billing. If Auburn has billed the landlord using an estimate of utility service consumed, the billing agent may estimate the charges to be billed to tenants until billing based on actual consumption resumes. Upon receipt of a corrected bill showing that the estimated bill over stated charges, the landlord must refund the difference to tenants. Upon receipt of a corrected bill showing that the estimated bill understated charges, the landlord may attempt to recover the underpayment from the tenants that actually incurred the charges during the billing period, but shall not attempt to recover an underpayment from a tenant who did not reside in the unit during the billing period in which the charges were incurred.

9. Sub-metering. Sub-metering is permitted as a way of allocating master metered utility services to tenants provided the following conditions are met:

(a) The sub-meters must be read prior to each billing.

(b) A landlord may not enter a unit without, and a tenant may not unreasonably withhold, consent to enter the unit in order to perform sub-meter installation, reading, repair, maintenance, and inspection, including removal of the sub-meter for testing, provided, however, that a landlord may enter a unit without a tenant's consent in the case of a sub-meter leak or emergency related to that unit's sub-meter.

(c) If a tenant contests the accuracy of the sub-meter, the tenant shall have the option of demanding an independent test of the meter by a certified testing company. If the meter reads within a 5% range of accuracy, the tenant requesting the test shall pay the cost of the meter test. If the meter reads outside a 5% range of accuracy, the landlord shall pay for the cost of the meter test and



within 30 days refund any overpayments for the past three months based on a recalculation of the past year's billings by correcting for the inaccuracy of the sub-meter. Sub-metering thereafter shall only be permitted with a repaired sub-meter.

B. Nothing in this section shall be construed to prevent a landlord from addressing billing of master metered or other un-metered utility services in a written addendum to a lease. A lease addendum may be used to give the notice required under subsection A.1 of this subsection, so long as the lease addendum is provided to the tenant with the notice required under that subsection, and so long as all other requirements of this chapter are satisfied.

13.52.050 Dispute resolution and remedies.

A. A dispute regarding the amount of charges or other terms and conditions contained in a bill shall be resolved as follows:

1. The tenant must notify the billing entity of the nature of and reason for the dispute by calling the number shown on the bill or by writing a letter to the billing entity within 30 days of receiving the bill. The tenant must have a good faith basis for any such dispute.

2. Within 30 days of receiving notice of a billing dispute, the billing entity must contact the tenant to discuss the dispute, and the billing entity and tenant must determine the amount of disputed and undisputed charges. The tenant must pay all undisputed charges within 30 days of reaching agreement with the billing entity.

3. No late fees or interest charges shall accrue on any disputed portions of a bill while the amount is being resolved in accordance with subsections A.1 and 2, and no collection activity related to the disputed portions of a bill may be instituted against a tenant that has notified the billing entity of a dispute in accordance with this chapter.

4. The tenant and billing entity shall continue to discuss in good faith any remaining disputed amounts and attempt to reach an agreement on the amount due, if any, within 60 days of the billing entity's receipt of notice of a billing dispute. If a tenant is unable to reach a satisfactory resolution of any portion of a disputed charge within the allotted time, the tenant may exercise any of the remedies set forth in Section B below or any other available remedies, provided, however, that if within 120 days of the billing entity's receipt of notice of a billing dispute, the tenant has not either exercised one of the remedies set forth in Section B or paid the remaining disputed amounts, the landlord may exercise any legal or equitable remedies available to it to collect the unpaid amounts, and provided further that nothing in this subsection shall be construed to deprive a landlord of its right to exercise any legal or equitable remedies available to it against a tenant that has not paid any undisputed charges, has not followed the procedures set forth in this section, or has not exercised good faith in disputing a charge.

B. If a tenant believes that it has been or will be subject to billing practices that violate any provision set forth in this chapter, including the failure to comply with the notice requirements of Section 13.52.040(A)(3), the tenant may, at its option, file a complaint against the landlord with the Hearing Examiner or institute a civil action against the landlord, as follows:

1. The Hearing Examiner is hereby by vested with the authority to hear and resolve, in a timely manner, tenant complaints against landlords regarding billing practices in accordance with its rules and procedures then in force governing contested cases. The filing fee for such a case shall be set at \$25. Upon the finding of a violation of this chapter, the Hearing Examiner shall award actual damages (including but not limited to refund of any overpayment or other fees or charges resulting from such violation, and costs of pursuing the claim) and a penalty of one hundred dollars, and may permit the tenant to terminate the rental agreement by written notice in accordance with RCW 59.18.090. If the Hearing Examiner determines that the landlord engaged in prohibited billing practices in deliberate violation of this chapter, the penalty mentioned in the preceding sentence shall also award attorneys' fees to the tenant. A final order or decision of the Hearing Examiner may be subject to judicial review in the King County Superior Court in accordance with the Hearing Examiner's rules and procedures.

2. In the alternative, a tenant may institute a civil action against the landlord. Upon a finding that the landlord engaged in billing practices that violate this chapter, the court shall award actual damages (including but not limited to refund of any overpayment of other fees or charges resulting from such violation, and cost of pursuing the claim) and a penalty of one hundred dollars, and may permit the tenant to terminate the rental agreement by written notice in accordance with RCW 59.18.090. If the court determines that the landlord engaged in prohibited billing practices in deliberate violation of this chapter, the penalty mentioned in the preceding sentence shall be two hundred dollars, and the court shall also award attorneys' fees to the tenant.

3. No late fees or interest charges shall accrue on any disputed portions of a bill while the amount is being resolved by the Hearing Examiner or court, and no collection activity or unlawful detainer action alleging default in the payment of rent related to the disputed portions of a bill may be instituted against a tenant that has filed a complaint with the Hearing Examiner or instituted a civil action in accordance with this chapter while the amount is being resolved by the Hearing Examiner or court. If the Hearing Examiner or court resolves the dispute and finds that a tenant that has not acted in good faith in asserting a billing dispute, the Hearing Examiner or court may order the tenant to pay late fees and/or interest charges on some or all of the disputed portions of the bill.

4. A landlord shall not pass on, charge, or otherwise allocate to tenants, in any manner whatsoever, any damages, fine or penalty (including attorneys' fees) that the landlord is ordered to pay under this chapter.

C. The existence of an unresolved or pending billing dispute does not relieve a tenant of the tenant's obligation to pay in a timely fashion all undisputed charges, including those undisputed charges that accrue after the dispute resolution procedures of this chapter have been commenced.

**SECTION TWO AMENDMENT TO SECTION OF CITY CODE.** Section 13.06.210 of the Auburn City Code is amended to read as follows:

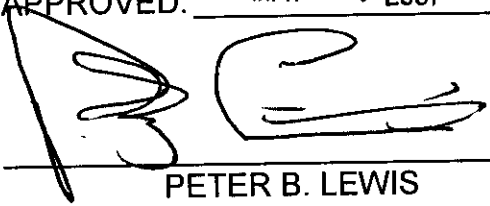
13.06.210 Service shut off.

It is unlawful for any owner/operator of any premises, including multi-family residential properties and complexes, connected to the city's water supply system to shut off the water to the premises or any part thereof unless the owner first makes a request to the city that the service of water to the premises or any part thereof be shut off, and if the premises are multi-family residential properties or complexes, it is also unlawful for any owner/operator of any such premises to shut off the water to the premises unless the owner/operator notifies the residents/tenants thereof not less than three (3) business days in advance of the time that the owner/operator requests that the service of water to the premises or any part thereof be shut off. When the water service has been shut off from any premises or any part thereof upon application of the owner/operator thereof, or for nonpayment of water charges, or for any other cause, it is unlawful for any person to turn on the city water to such premises except when authorized to do so by the city. (Ord. 5849 § 1, 2004; Ord. 5216 § 1, 1999; Ord. 4878 § 3, 1996.)


**SECTION THREE CONSTITUTIONALITY OR INVALIDITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance, is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION FOUR IMPLEMENTATION.** The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

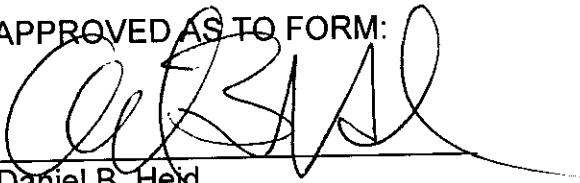
**SECTION FIVE EFFECTIVE DATE.** This Ordinance shall take effect and be in force five days from and after its passage, approval, and publication as provided by law and on June 15, 2007.

INTRODUCED: MAY 7 2007  
PASSED: MAY 7 2007  
APPROVED: MAY 7 2007  
  
\_\_\_\_\_  
PETER B. LEWIS  
MAYOR

ATTEST:

  
\_\_\_\_\_  
Danielle E. Daskam,  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniel B. Heid  
City Attorney

PUBLISHED: May 10, 2007