



# **WATER AND SEWER APPEALS BOARD OPERATING PROCEDURES**

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# **CITY OF ATLANTA WATER AND SEWER APPEALS BOARD** **OPERATING PROCEDURES**

## **Section 1: AUTHORITY AND SCOPE**

The City of Atlanta’s Water and Sewer Appeals Board (“Board”) is governed by the Atlanta Municipal Code (“City Code”) §§ 154-26 through 31. The City Code authorizes the Board to establish policies and procedures: “The Board shall establish its own rules of procedure for the accomplishment of its duties and functions, provided that such rules shall not be in conflict with [the City Code], state or federal law, and the water and sewer revenue bond ordinances.” City Code § 154-26(f). The Operating Procedures are to facilitate the Board’s resolution of billing complaint appeals by water and sewer customers in a fair, impartial, independent, and prompt manner. These procedures supplement the City Code. If any procedure herein conflicts with the City Code, the City Code will supersede only the provision found to be in conflict.

The Board’s scope of review is limited by the City Code. The Board cannot make policy decisions; it addresses administrative-related matters exclusively. City Code § 154-26(g).

## **Section 2: DUTIES AND AUTHORITY OF THE BOARD**

### **2.1 Duties**

- a. The Board resolves customer appeals related to billing issues, as set forth in Section 2.2. The Board resolves these appeals by conducting an appeal hearing or administratively reviewing the appeal request. Detailed discussion of the hearing, review, and deliberation processes are included herein.
- b. The Board will “[s]et forth findings of fact and conclusions as to each dispute, to be mailed to the consumer, and file the findings with the municipal clerk.” City Code § 154-26(h)(2).
- c. When appropriate, the Board will “order the department of water to refund, credit or adjust the amount or portion of the amount in dispute.” City Code § 154-26(h)(3).
- d. The Board will furnish due process rights to customers who have made an appeal (“appellants”). City Code § 154-26(h)(4).

### **2.2 Authority**

- a. The Board has authority to:
  - i. Review determinations made by the Commissioner related to adjustments and credits to bills for meter leaks, other identified leaks, toilet leaks if the customer is deaf, vandalism, meter-reading errors, and computer entry billing errors. City Code §§ 154-27, 28. The amount and extent of such adjustments and credits are detailed in City Code §§ 154-27(b), (c).

- ii. Rule on customer appeals from administrative penalties imposed pursuant to the City of Atlanta Water Use Restriction Ordinance (City Code § 154-73, *et seq.*) and the City of Atlanta Waste of Water Ordinance (City Code § 154-59, *et seq.*). City Code § 154-26(h)(1).
- b. The Board does not have jurisdiction to consider matters involving theft of services, tampering of metering equipment, fees unrelated to penalties set forth in City Code § 154-26(h)(1), or matters not previously raised by the customer in writing to the Commissioner.

**Section 3: THE APPEALS BOARD.**

**3.1 Composition of the Board**

- a. Members of the Board are selected in accordance with City Code §§ 154-26(a), (b).
  - i. The Board consists “of seven persons who shall be residents of the area served by the department of water.” City Code § 154-26(a).
  - ii. “Six members will be nominated by the paired district councilmembers with the concurrence of the at-large councilmember and one member will be nominated by the president of council.” City Code § 154-26(b)(1).
  - iii. “The nominations shall be voted on by the entire council, which shall either approve or disapprove each nomination.” City Code § 154-26(b)(2).
  - iv. “The membership shall consist of at least three lay persons, one of whom must be retired and over 60 years of age, and four other persons, preferably consisting of at least one from each of the following three categories: residential property management, plumber or property maintenance person with at least five years of plumbing experience, civil or mechanical engineering.” City Code § 154-26(b)(3).
- b. If, however, the composition of the Board differs from the specifications delineated above, it may still perform its duties. The Board will notify the Council that the Board composition differs from the Code specifications as soon as practicable so that the Council may consider the membership composition at the next nominating opportunity.

**3.2 Compensation**

“Each member of the board shall be paid \$100.00 for each board meeting attended; provided, however, the total amount paid any member shall not exceed the sum of \$10,500.00 in any one calendar year.” City Code § 154-26(c).

### 3.3 Term

Board members are appointed for three-year terms. City Code §154-26(d).

### 3.4 Term Limit

“No person shall serve more than eight consecutive years as a member of the board.” City Code § 154-26(d). Term limits and membership requirements (delineated in City Code § 154-26(b)(3)) may be waived by the Council.

### 3.5 Vacancies

“Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.” City Code § 154-26(d).

## **Section 4: OATH**

As provided in City Code § 2-1851, Board members will execute and file with the municipal clerk an oath or affirmation in the following form:

I swear (or affirm) that I will faithfully and impartially perform the duties imposed upon me by reason of my appointment as an officer or member of [the City of Atlanta Department of Water and Sewer Appeals Board]. I have not, in order to influence my appointment to this position, directly or indirectly, expressly or by implication, promised my vote or support to any person. In all things pertaining to my position, I will be governed by what is my conviction for the public good. I further swear that I will uphold and support the Constitution and laws of the United States, of the State of Georgia, and the City of Atlanta. I further swear (or affirm) that I will uphold and support the Ethics Code of the City of Atlanta.

## **Section 5: DUTIES OF MEMBERS**

### 5.1 Duties of All Members

- a. Attend all meetings and hearings. Should a board member need to be absent or arrive late for a meeting or hearing, or need to leave early, such board member shall notify the Chairperson before such meeting occurs. Otherwise, board members are expected to adhere to meeting beginning and end times.
- b. Be well informed on issues and agenda items. Seek legal guidance when needed.
- c. Contribute skills, knowledge, and experience when appropriate.
- d. Listen respectfully to others' points of view, and to participate in meetings, hearings, and executive sessions in a professional and courteous manner to those in attendance and to fellow board members. Disorderly words from a board

member shall be taken down by the member who objects to them, or by the Chairperson, and then read to the board member by the Chairperson. If the board member denies them, the Board shall decide by a vote whether they are the board member's words or not. If such vote is in the affirmative, the board member shall be precluded from voting on the presently pending matter or appeal before the Board. If a board member admits to the disorderly words he used, and will not apologize for using them, the board member shall be precluded from voting on the presently pending matter or appeal before the Board. Nothing in this subsection shall limit any action of the Board under Section 5.7 below.

- e. Do not discriminate against other Board members or appellants.
- f. Utilize administrative assistance when appropriate to carry out your duties, per City Code: "The executive branch shall provide such staff services as may be required for the efficient operation of the board, through the department of watershed management." City Code § 154-26(i).
- g. Vote on all questions properly put before the board member. Abstention from voting is not allowed except as specified in Section 5.6 below or as otherwise required by law.

## 5.2 Elections

- a. The Board elects a Chair annually.
  - i. "A member shall be elected annually by the board to preside at all meetings of the board, for whatever purpose called, and shall perform and exercise all of the functions, powers and duties granted or assigned by applicable law to a person who presides at or chairs meetings of the board; provided, however, the member shall not be permitted to vote on any matters brought before the board except to break tie votes. The board may elect another member to preside in the absence of the presiding officer, and such person shall also not be permitted to vote while presiding except to break tie votes." City Code § 154-26(e).
- b. Elections are held according to the standards set forth in the most current edition of *Robert's Rules of Order*.<sup>1</sup>

## 5.3 Duties of the Chairperson

- a. The Chairperson of the Board is the designated facilitator for all meetings, hearings, and executive sessions of the Board. The Chairperson, however, does not participate in the deliberations or decisions made by the Board, as provided by City Code § 154-26(e).

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<sup>1</sup> Where the Operating Procedures references "the most current edition of *Robert's Rule of Order*," Board members also may use the most current edition of *Robert's Rules of Order In Brief*.

- b. The Chairperson is responsible for the orderly proceeding of all Board meetings and hearings, including executive sessions, and for preparing and presenting the agenda. The Chairperson ensures that all parliamentary proceedings at the meetings, hearings, and executive sessions are conducted according to the most current version of *Robert's Rules of Order* and that the Board complies with all policies and procedures. The Chairperson performs such other tasks as are necessary for such meetings, hearings, and executive sessions, including other tasks as required by these Operating Procedures.
- c. The Chairperson presides at all meetings, hearings, and executive sessions of the Board.
- d. The Chairperson signs official documents that require the signature of the Board.
- e. The Chairperson serves as a spokesperson for the Board. The Chairperson may designate another Board member to comment publicly if comments are deemed by the Commissioner to be necessary and appropriate.

#### 5.4 Duties of the Vice Chairperson

- a. The Vice Chairperson is elected in the same manner as the Chairperson.
- b. The Vice Chairperson assists the Chairperson in planning the agenda for Board meetings and hearings, and assumes any other duties delegated by the Chairperson.
- c. The Vice Chairperson will be called to act when the Chairperson cannot act.
- d. When the Vice Chairperson acts in the stead of the Chairperson, the Vice-Chairperson performs the duties of the Chairperson and, when so acting, has all the powers of the Chairperson.

#### 5.5 Orientation and Training

- a. The Chairperson and Vice Chairperson are responsible for ensuring that new Board members are aware, and have copies, of the applicable City Code and these Operating Procedures.

#### 5.6 Conflict of Interest

- a. Members of the Board will act at all times in a manner that promotes confidence in the integrity and impartiality of the appeals process. A conflict of interest or the appearance of a conflict of interest can arise from a situation that reasonably raises a question of a Board member's impartiality, such as a Board Member's involvement with the subject matter of a dispute under consideration, or from a past or present relationship between a Board member and an appellant. Appellants or Board members should direct complaints or questions of potential impartiality

to the City's Ethics Division of the Office of the Inspector General and the Commissioner.

- b. Board members must comply with the ethical standards set out in sections 2-801 et. seq. of the City Code.
- c. A conflict of interest does not exist by virtue of the fact that an appellant raises an issue that is shared by Board members as Water and Sewer customers. *See* City Code § 154-26(a). Such conflicts are bound to arise since the Board must be comprised of residents of the area served by the Department of Water. *Id.* City Code § 154-26(a). Further, the Board has an obligation to provide due process rights to all appellants within the terms and conditions provided in City Code sections 154-26 through 31. In such instances, the Board must carefully detail the reason(s) for reaching its decision, and should show impartiality in its findings of fact and conclusions.
- d. Where a Board member believes that a conflict or potential conflict of interest exists, the affected member must indicate that to the Board, briefly state the nature of the conflict and thereafter abstain from any involvement with the relevant appeal.

#### 5.7 Removal of a Board Member

- a. Should a board member fail to perform his or her duties 3 or more times, the Chairperson, with the assistance of administrative personnel that assist the Board as needed, shall prepare a letter to the Municipal Clerk, President of Atlanta City Council and each member thereof summarizing the breaches of such duties and recommending the removal of the board member from the Board pursuant to Atlanta City Charter § 3-401(III)(e). Upon a majority vote of the Board in the affirmative to support and transmit the letter, the letter shall be transmitted by the Chairperson to the Municipal Clerk, President of Atlanta City Council and each member thereof. Any vacancy that results from such a vote by the Board and/or the Atlanta City Council will be filled according to Atlanta City Code § 154-26(d).

#### 5.8 Meetings and Hearings

##### A. Regular Meetings and Hearings

- 1. The most current edition of *Robert's Rules of Order* governs all meetings of the Board, unless otherwise provided for in these procedures.
- 2. Board members are expected participate in the meetings, hearings, and executive sessions in a professional and courteous manner.



3. Meetings of the Board are called as necessary to conduct its business, including holding appeals hearings and performing administrative reviews of appeals.
4. The Board requires a quorum to decide all matters. City Charter § 3-401(II.)(c)(2)
5. Regular meetings may be conducted via teleconference pursuant to O.C.G.A. § 50-14-1(g).
6. All appeals hearings are open to representatives of the appellant, except that the number of representatives of any one appellant may be limited at the discretion of the Chairperson, with the reason for such limitation noted on the record.
7. The Board may call an executive session before, during, or following an appeal hearing for any purpose authorized by O.C.G.A. § 50-14-3 and must follow the requirements of O.C.G.A. § 50-14-4.

B. Special Meetings

1. Special meetings are held as necessary to conduct additional business of the Board.
2. Special meetings may be conducted in the same manner as regular meetings.

5.9 Voting

- a. The Chairperson “shall not be permitted to vote on any matters brought before the board except to break tie votes. The board may elect another member to preside in the absence of the presiding officer, and such person shall also not be permitted to vote while presiding except to break tie votes.” City Code § 154-26(e); *see also* Section 5.4
- b. A quorum consists of three members. City Code § 154-26(e).
- c. For meetings conducted via teleconference, all votes shall be taken by roll call.
- d. For meetings conducted via teleconference, the presence of a quorum shall be established by audible roll call at the beginning of the meeting. Thereafter, the continued presence of a quorum shall be determined by the online list of participating Board members, unless any member demands a quorum count by audible roll call. Such a demand may be made following any vote for which the announced totals add to less than a quorum.

## Section 6: Appeals Process

### 6.1 Appeals Process

- a. The right of appeal is conferred by City Code § 154-29:  

“A customer may appeal a determination as to the amount of the water/sewer bill owed, as set forth in section 154-28, by filing a written appeal to the water and sewer appeals board with the commissioner of the department of watershed management, describing the basis of the appeal and the specific dates of the bill(s) in dispute.”
- b. Appellants may be heard in person, and present witnesses and documentary evidence. City Code § 154-26(h)(4)(a). In the alternative, appellants may waive their right to be heard in person and request that the Board review their matters administratively. City Code § 154-29.
- c. Documentary evidence submitted by an appellant will not be returned to the appellant and becomes part of the appellant’s customer file. The appellant should submit copies of documents, not original documents, with his or her appeal.
- d. For hearings conducted via teleconference, the Board may require appellants to provide any evidence to the Board within a reasonable time before the hearing and no later than five business days before the hearing. If an appellant provides evidence to the Board less than five business days before the hearing or at the hearing and the Board is unable to dispense with the appeal that day, it may postpone that matter to a another regularly scheduled hearing.
- e. To be eligible for an appeal, a customer must send a request for a Board hearing to the Board (via [www.atl311.com](http://www.atl311.com), or as otherwise designated by the Department of Watershed Management) within seven business days of the mailing date of the written response provided for in City Code § 154-28. City Code § 154-29.
- f. Based on the facts in a particular appeal, the Board may presume that the Commissioner has waived the requirement that the disputed amount be paid before the appeal hearing.<sup>2</sup>
- g. An appeal request must be filed by the customer before a hearing is scheduled. After an appeal request is filed, personnel within the Department of Watershed Management will schedule the appeal for a hearing on a first-come, first-served

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<sup>2</sup> The City Code contains conflicting terms, stating that, to be eligible for an appeal, “[t]he customer shall pay the *average amount*, as determined by the department, for the period in dispute.” City Code § 154-29 (italics added); *but compare* City Code § 154-28 (requiring “payment of the amount in dispute”); *see also* City Code § 154-26(h)(1) (requiring appeals to be “accompanied, unless waived by the commissioner of the department of watershed management, by the amount in dispute.”).

basis as the schedule permits, unless the appellant requests a specific date that the Department can accommodate.

## 6.2 Confidential Records

- a. Except as otherwise required by the Georgia Open Records Act, all records, proceedings, and other matters presented to the Board that have not been disclosed in connection with the Board's decisions or as otherwise required by law are strictly confidential. The Board may, however, disclose as part of its Findings of Fact and Conclusions certain information provided by the appellant.

## 6.3 Pre-Hearing Procedures

- a. Only appeal requests that comply with the City Code may be scheduled for a hearing or administrative review by the Board.
- b. The Board will ensure that each appeal request is timely and accompanied by the required payment, if any, in accordance with the Code and Section 6.1(f) of these procedures. The Board will review billing information and the appeal request receipt information before the matter is scheduled for a hearing. The Board will receive and review all newly-received appeal requests at each meeting or hearing date to determine the appeal's eligibility to be set for a hearing date.
- c. Accepted appeals will be scheduled for a hearing by the assigned administrative personnel, and the appellant will be sent notice of the appeal hearing date and time.
  - i. If the appellant requests an in-person hearing (including one held via teleconference) and does not appear at the scheduled date and time, his or her matter will be re-scheduled and a Second Hearing Notice will be sent to the appellant. If the appellant fails to appear a second time, his or her appeal will be administratively reviewed at that time.
- d. Appellants are afforded the right to confront and cross-examine employees or agents of the City as to the basis for determining the amount billed, pursuant to City Code §154-26(h)(4)(c). As such, the Board will receive and consider appellant requests for an employee or agent to appear at the hearing for questioning by the appellant but such requests must be made at least five business before the hearing. The Board will not produce an employee or agent for this purpose without a written request from the appellant. The Board will consider, but not guarantee, an appellant's request for a specific person at the hearing. The Board will not, and may not, receive or consider subpoenas for the appearance of certain witnesses or production of documents for the appeals hearing.

- e. The Chairperson is responsible for:
  - i. Preparing and publishing the meeting schedule for regular meetings at least one week prior to each meeting indicating the time, place and dates of the meetings pursuant to O.C.G.A. § 50-14-1(d)(1) by maintaining such notice in a conspicuous place available to the public at the regular place of Board meetings and on the Board's website, if any;
  - ii. Providing the requisite notice for meetings, other than regularly scheduled meetings, pursuant to O.C.G.A. § 50-14-1(d)(2) or (3);
  - iii. Preparing and making available the agenda for each meeting within the two weeks prior to each meeting pursuant to O.C.G.A. § 50-14-1(e)(1) by posting the agenda at the meeting site. The agenda may also be posted on the Board's website; and
  - iv. Canceling or postponing any regularly scheduled meeting and where possible, publishing the cancellation or postponement no later than 24 hours prior to the meeting and publishing notice of such cancellation or postponement in a conspicuous place available to the public at the regular place of Board meetings and on the Board's website.

#### 6.4 Hearing Procedures

- a. The Board is a citizen appeals board and is not a court of law.
- b. The Board hears the arguments of the appellant or his or her representative.
  - i. The Code does not authorize the Board to provide an opportunity to be heard to any party opposing the appellant. The Board may, however, receive and review the Commissioner's determination letter as evidence from or on behalf of the appellant.
- c. The Board may receive and review any billing records or repair histories it requests from the Department of Watershed Management to help determine the matter appealed.
- d. The appellant bears the burden of proof.
- e. The appellant must bring the Commissioner's determination letter and any evidence to support the appellant's appeal request. Evidence may not be submitted after the hearing unless so requested by the Board.
- f. All hearings are recorded by personnel assigned to assist the Board with the administration of its duties, in accordance with City Code § 154-26(i). The recording may be by audio or video recording or in written form.

- g. When the appellant enters the hearing room or appears online, the Board will go on the record, introducing all persons present in the room, the date and time, and the matter number. The Board will then invite the appellant, or his or her designated representative, to present his or her case, including presenting witnesses and documentary evidence.
- h. If, upon proper showing of need and relevance to the dispute, the appellant requests that an employee or agent of the city be present at the hearing for questioning, an employee or agent will be produced for that purpose. Such an employee or agent is only required to respond to questions about which he or she has actual knowledge or experience in the course and scope of his or her present job position, or a past job position if the past job position is specifically relevant to the issue at hand; for instance, if an employee currently holds an administrative position but previously worked as a meter-reader and can speak to a circumstance in which he or she read a particular meter, the specifics of which are related to the appellant's appeal.
- i. Subject to Section 6.1(d), the Board receives any evidence the appellant has to support his or her case. The Board has inherent authority, in consultation with its attorneys, to limit the scope, volume or nature of any submitted evidence to matters that are consistent with its authority, resources, and good faith judgment. At the conclusion of the appellant's argument and presentation of evidence, the Board may ask questions.
- j. After deliberation, the Board determines if it has further questions for the appellant.
- k. If the Board has questions, it may call on the appellant. When the Board has completed its examination of the appellant, it informs the appellant that a Decision Letter will be emailed or mailed to his or her address.
- l. When the Board has reached its decision by vote, according to these procedures, it will complete the Decision Letter. City Code, § 154-26(h)(2).

When the Board finds that an adjustment, credit, or refund is warranted, it may reduce CCFs/Usage where appropriate, or may adjust a monetary amount.

#### 6.5 Post-Hearing Actions by the Board

- a. The Board has the duty and authority to issue a Decision Letter for each dispute. City Code § 154-26(h)(2).
- b. The Decision Letter is to be emailed or mailed to the appellant and filed with the Municipal Clerk. City Code § 154-26(h)(2). The Board may delegate this task to the administrative personnel that assists the Board.

- c. The Decision Letter should be emailed or mailed to the appellant within one week of the hearing. The Board may delegate this task to the administrative personnel that assists the Board.
- d. The Board may determine, after an appeal hearing, that it lacked jurisdiction to hear the appeal. In such a case, the Board will issue a Decision Letter to that effect.
- e. The Chairperson is responsible for:
  - i. Preparing and making available for public inspection the summary of the subjects acted on and a summary of those Board members present at each meeting within two business days of the adjournment of each meeting, pursuant to O.C.G.A. § 50-14-1(e)(2)(A). The summary may be made publicly available by posting at the meeting site or on the Board's website; and
  - ii. Ensuring that all recordings of meetings or written meeting minutes from the immediate past meeting, once approved at the subsequent regular meeting, must be made available for public inspection immediately following the regular meeting at which those minutes were approved, pursuant to O.C.G.A. § 50-14-1(e)(2)(B). Recordings of meetings or written meeting minutes may be made publicly available by posting on the Board's website.

#### 6.6 Further Appeal

The Board does not decide the jurisdiction of the Superior Court to hear appeals. All appeals from the Board are to the superior court by filing a petition with the superior court within 30 days after the service of the final decision of the water and sewer appeals board,” according to City Code § 154-31.

#### **Section 7: AMENDMENTS TO OPERATING PROCEDURES**

Any amendments to these procedures must be by a majority vote of the Board.