

City of Lackawanna

Garbage Collection Fees

APRIL 2022



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Contents

- Report Highlights 1**

- Garbage Collection Fees 2**
 - How Should Garbage Fees Be Assessed and Billed? 2
 - Garbage Fees Were Not Always Properly Assessed and Billed 2
 - How Should Garbage Fee Exemptions Be Supported and Processed? 5
 - Exemptions Were Not Properly Supported or Processed 5
 - What Do We Recommend? 7

- Appendix A – Response From City Officials 9**

- Appendix B – OSC Comment on the City’s Response 11**

- Appendix C – Audit Methodology and Standards 12**

- Appendix D – Resources and Services 14**

Report Highlights

City of Lackawanna

Audit Objective

Determine whether City of Lackawanna (City) officials properly assessed and billed solid waste (garbage) collection fees (garbage fees).

Key Findings

City officials did not always assess and bill garbage fees in accordance with the City Code (Code). Officials also did not provide adequate oversight or develop written policies and procedures for assessing and billing garbage fees.

- 30 of 33 properties reviewed (91 percent) were not assessed and/or billed the correct garbage fees in accordance with the Code. Twenty-five of these properties were underbilled a total of \$6,350.
- 16 organizations were billed for garbage services they received. However, the Code indicates the organizations were not eligible for such services.
- 14 of the 27 garbage fee exemptions reviewed (52 percent) lacked appropriate support and/or did not comply with City requirements.

In addition, although the DPW Commissioner prepared memos indicating 10 City properties required garbage fee assessment and/or billing updates during our audit period, the Assessor had not updated the assessment records for seven properties and the Treasurer did not issue bills for four of those seven properties totaling \$889. While the financial impact appears immaterial, not making the necessary updates for these properties will result in continued inaccurate billing in the future.

Key Recommendations

- Develop comprehensive written policies and procedures for assessing and billing garbage fees.
- Ensure garbage service and corresponding garbage fees comply with the Code.

City officials agreed with our findings and recommendations and indicated they plan to initiate corrective action. Appendix B includes our comment to an issue raised in the City's response.

Background

The City is located in Erie County and is governed by an elected Mayor and an elected five-member City Council (Council).

The City's Department of Public Works (DPW) provides garbage collection services to residents and some businesses/commercial properties located in the City. Garbage fees are generally included on real property tax bills, which are sent out every six months.

The Council is responsible for the general oversight of City operations and finances, including adopting the annual budget and setting annual garbage fees. The elected Mayor is responsible, along with other officials and staff, for managing day-to-day operations.

The City Assessor (Assessor) is responsible for assessing the appropriate garbage fees on properties.

The City Treasurer (Treasurer) is responsible for garbage fee billing, applying annual fee exemptions and adjustments.

2020-21 Garbage Collection Quick Facts

Garbage Fee Revenue	\$1,959,610
Properties with Fees	5,384
Annual Unit Garbage Fee	\$254

Audit Period

August 1, 2020 – September 7, 2021

Garbage Collection Fees

Eligibility for garbage collection is based on property type and generally includes single family residential properties, multiple dwellings with six or fewer residential units,¹ and certain businesses and commercial properties.² The Code establishes parameters for garbage collection including the types of properties eligible for garbage collection services and a basic fee structure. The Code prohibits the City from providing collection and disposal of garbage for any properties categorized as a house of worship, group home, nonprofit organization or private school or club. The Code also states that the Council will annually determine the garbage collection fee (garbage fee) at an amount which allocates the total cost of garbage collection and disposal services among users in a fair and equitable manner.

How Should Garbage Fees Be Assessed and Billed?

The Council should establish and adopt policies and procedures to provide clear guidance for employees who are involved in the process of assessing and billing garbage fees and help ensure that all users receiving garbage collection services are assessed and billed accordingly. City officials should ensure compliance with the Code and that assessment and billing of garbage fees are in accordance with the Code and any applicable written policies and procedures.

The Assessor should ensure permanent changes made to the garbage fee to be assessed on the property are updated in the assessment rolls in a timely manner. This helps ensure future billings are correct. In addition, billing errors identified should be corrected as soon as they are known to help ensure fees for services are billed accurately and in accordance with the Code.

In accordance with the Code, users are required to pay one \$254 garbage fee per year for each unit they own and for which the City collects garbage. Multiple dwelling properties can be billed up to six units. Multiple dwelling properties that exceed six units must contract with a private garbage collection company.

Garbage Fees Were Not Always Properly Assessed and Billed

While the Council did not adopt adequate policies or establish written procedures for assessing and billing garbage fees, the DPW clerk and Treasurer told us that the number of collection fees assessed to each property is based on the property type indicated on the assessment roll for each property. The Treasurer told us she

1 The Code allows for users who own multiple units to apply for garbage fee exemptions. Refer to the section titled "How Should Collection Fee Exemptions Be Supported and Processed?"

2 In general, the Code requires any business that exceeds 300 pounds of solid waste (two totes) to maintain a dumpster and/or retain private garbage collection services. However, if a dumpster cannot be placed on the premises, an application can be submitted to the Commissioner of Public Works for permission to purchase additional totes that the City would collect and dispose of for a fee to be determined by the Commissioner of Public Works, up to a maximum of four totes.

uses the assessment roll to calculate the property owners' garbage fee(s) and adds them to the correlating real property tax bills. If permanent changes (e.g., additional unit built or property type change from commercial to residential) to the number of fees applicable to a property occur, the DPW Commissioner notifies the Treasurer and the Assessor's clerk via memos indicating the changes to be made.

We identified 220 properties that did not appear to have been assessed the correct number of collection fees based on the property type and number of units indicated on the assessment roll. Specifically, 130 properties appeared to have been assessed \$33,020 fewer collection fees and 90 properties appeared to have been assessed \$22,860 more collection fees than they should have been, in accordance with the Code.

We reviewed documentation for 33³ of the 220 properties and found 30 (91 percent) were not assessed and/or billed in accordance with the Code. Specifically:

- Twenty multiple-dwelling properties, each with two units, were assessed and billed one garbage fee rather than two, resulting in under-billed fees totaling \$5,080. Four of these properties were owned by City employees.
- Five single-family properties were not assessed or billed garbage fees, resulting in under-billed fees totaling \$1,270.
- One single-family property was incorrectly assessed and billed two garbage fees, resulting in over-billed fees of \$254.
- Two properties owned by social organizations were each provided garbage services and billed associated fees even though the Code prohibits providing such services to these entities.
- One multiple-dwelling property with two units was assessed as a single-family property but was correctly billed two garbage fees.
- One single-family property was incorrectly assessed as a multiple-dwelling property but was correctly billed one garbage fee.

The remaining three properties were City-owned properties and not subject to a garbage fee.

In addition, the DPW clerk had documentation for 10 properties which indicated that either due to errors or permanent changes to the properties, the number of garbage fees assessed and/or billed to those properties should have been updated during our audit period. The DPW clerk told us the DPW Commissioner provided her with paper memos indicating such updates, and she delivered the

We reviewed documentation for 33 of the 220 properties and found 30 (91 percent) were not assessed and/or billed in accordance with the Code.

3 See Appendix C for sampling methodology.

memos to the Assessor's clerk and Treasurer so that the appropriate adjustments could be made to the assessment records and/or tax bills. While the Treasurer maintained copies of the memos, the Assessor's clerk did not. Therefore, we were unable to determine whether she received the memos.

The assessment roll was not updated to reflect the correct number of garbage fees and/or the Treasurer did not correct the tax bills for seven of these 10 properties as follows:

- One single-family property's owner contacted the City for a replacement tote in December 2020, and the DPW Commissioner discovered that a garbage fee had not been assessed or billed to this property even though collection services were provided. The Treasurer and DPW clerk told us that the property had erroneously never been charged a garbage fee. The DPW clerk sent a memo to the Assessor and Treasurer, but the property's assessment was not updated and the Treasurer did not bill the owner for services previously provided. The City lost revenue of \$254 on this property during our audit period.
- One single-family property built in 2018 was not previously assessed and billed a garbage fee. The Treasurer identified the discrepancy when preparing the 2020-21 tax bills, updated the tax bill and informed the DPW Commissioner. The DPW Commissioner prepared a memo to notify the Assessor's clerk, but the property's assessment was not updated.
- A new single-family property built in December 2020 was not updated on the assessment roll or billed a garbage fee. The City lost revenue of \$127 on this property during our audit period.
- Two multiple-dwelling properties should have each been billed one additional fee. The Treasurer did not bill these property owners for the services provided, and the number of fees in the assessment system was not updated for either property. The City lost revenue of \$508 on these properties during our audit period.
- One multiple-dwelling property with two units was not assessed garbage fees. While the error was identified when the property owner requested replacement totes from the City and the Treasurer billed the property owner for the services provided, the property's assessment was not updated a year later.
- One commercial property, previously assessed and billed one collection fee, requested an additional tote in June 2020. The DPW Commissioner prepared a memo indicating an additional fee was to be added to the property's assessment. The Treasurer updated the tax bill for 2020-21, but the property's assessment was not updated. Because the Code does not indicate commercial properties are subject to an additional garbage fee upon

request of a second tote, we question the decision to assess and bill an additional fee.

By not making the appropriate assessment and billing adjustments in a timely manner, City officials are underbilling for services provided, and there is a risk that future garbage fees will continue to be billed incorrectly.

Furthermore, the City collected garbage for and billed 16 properties – 11 churches, three social organizations, one nonprofit and one private school – that were not eligible for such services according to the Code. While the DPW Commissioner told us that the organizations that own these properties submitted special requests to the Council, he was unable to provide documentation supporting these requests or Council approval.

Due to inadequate policies, a lack of written procedures and a lack of oversight by the Council and Mayor, garbage fees were not assessed and billed appropriately. Without clear written guidance and adequate oversight, City officials are unable to ensure that property owners are assessed and billed garbage fees fairly and equitably and in accordance with the Code. The DPW clerk, Treasurer and Assessor were unable to provide documentation or explanations for the assessment and billing inconsistencies.

How Should Garbage Fee Exemptions Be Supported and Processed?

The Code allows for users who own multiple units to request a garbage fee exemption for units that will not be occupied. Exemption requests must be made by August 31 through a process whereby the property owner makes a sworn affidavit under penalty of perjury that a unit is unoccupied and will not be occupied during the fiscal year for which the user fee applies. The City requires property owners to complete a signed and notarized Affidavit Claiming Exemption for User Fee form. According to the Code, a unit for which an exemption is requested will be subject to a semiannual, random inspection by the City's Code Enforcement Officer to determine whether the unit is occupied. The garbage fee for such a unit will be prorated so the owner will pay the fee for the time this unit is occupied.

Exemptions Were Not Properly Supported or Processed

Although the Code established a process for requesting a user fee exemption, City officials did not develop written procedures for processing user fee exemption requests.

The DPW clerk told us property owners requesting exemptions provide her with signed and notarized affidavits documenting how many units are occupied on the property annually. The Code Enforcement Officer performs an inspection of each property, documents the number of occupied units on the Garbage Unit

Although the Code established a process for requesting a user fee exemption, City officials did not develop written procedures for processing user fee exemption requests.

Correction Inspection forms (inspection forms) and provides the inspection forms to the DPW clerk. The DPW clerk provides a copy of each inspection form to the Treasurer and files the original inspection forms and correlating affidavits. The Treasurer told us she adjusts real property tax bills to reflect the number of garbage fees based on the number of occupied units indicated on the inspection forms.

We reviewed documentation for all 27 exemptions requested during our audit period and found the Treasurer reduced the garbage fees for 14 (52 percent) properties even though she lacked appropriate support. Specifically,

- Nine exemption requests did not include dates and were not notarized,
- Two were approved without an inspection,
- One had conflicting information between inspection results and the exemption request form,
- One lacked an exemption request, and
- One was not submitted by the August 31 deadline.

The remaining 13 exemption requests were made in accordance with City requirements, and the correlating garbage fees were adjusted accordingly. Additionally, an initial inspection of the properties to verify the units for which exemptions were requested were unoccupied was performed, but the Code Enforcement Officer did not perform the required second, random inspection on these properties. By not completing both semiannual inspections, officials cannot be sure the properties remained unoccupied and eligible for exemptions or whether a prorated user fee should have been applied. The DPW clerk and Treasurer told us they believe the exemption discrepancies occurred because procedures have evolved over the years without clear, written policies and procedures being developed.

In addition, there was confusion amongst staff from the three departments involved in processing exemption requests and adjustments, including which department was responsible for processing exemptions and adjusting user fee assessments and bills. Additionally, there is no process in place to verify that changes are being made in a timely manner or that only appropriately approved changes are applied.

Due to a lack of clear written guidance and proper oversight, exemption requests were not always supported or processed appropriately. As a result, exemptions are not always granted in accordance with the Code, and the Council, Mayor and City officials cannot be sure that exemptions were provided fairly, equitably and in accordance with the Code.

What Do We Recommend?

The Council and Mayor should:

1. Ensure clear written policies and procedures are developed to convey the Council's expectations for assessing and billing garbage fees in accordance with the Code, including:
 - a. Ensuring collection fees on the assessment roll are accurate and up to date,
 - b. Verifying only eligible properties are provided garbage services,
 - c. Completing updates to assessments and bills accurately and in a timely manner,
 - d. Reviewing exemption requests and making appropriate assessment and bill adjustments in a timely manner,
 - e. Enforcing property inspections, and
 - f. Outlining job duties of each department/individual involved in the process.
2. Provide adequate oversight to ensure garbage fees are assessed and billed in accordance with the Code and other applicable written policies and/or procedures that may be established.
3. Ensure garbage service and corresponding garbage fees comply with the Code.
4. Consult with legal counsel to determine whether incorrectly billed garbage fees should be recovered and/or refunded.

The Assessor should:

5. Verify that garbage fees assessed are appropriate for the property type and in accordance with the Code and maintain supporting documentation for any variances.
6. Update garbage fees on the assessment roll upon receipt of change notifications and immediately address errors that are identified.

The Treasurer should:

7. Update garbage fee bills timely upon receipt of change notifications.

The DPW Commissioner should:

8. Ensure exemption request applications are complete and appropriate prior to notifying the Treasurer of collection fee changes.

The Code Enforcement Officer should:

9. Perform semiannual inspections of properties for which collection fee exemption requests are made, in accordance with the Code.

Appendix A: Response From City Officials

City officials reference two additional responses. The first response is related to, and included in, this report. The second response relates to, and is included in, the City's companion report, *City of Lackawanna, Network Management and Internal Controls, 2021M-215*.



*Annette Iafallo, Mayor
City of Lackawanna*

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March 28, 2022

██████████ Auditor
██████████ Auditor
Division of Local Government and School Accountability
295 Main Street-Room 1032
Buffalo, New York 14203-2510

Dear ██████████

Thank you for very much for taking the time to audit and point out items that need to be corrected. I totally agree with your findings.

The Commissioner of Public Works, Tony DeSantis and our Computer Technician, Gene Olivieri III, have been working to address your concerns, and have completed a percentage of the items.

Attached are the replies from Tony and Gene, please contact me if you have any questions.

Respectfully,

Annette Iafallo
Mayor



**Department of Public Works
City of Lackawanna**

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To: NYS Comptroller's Office
From: Anthony DeSantis, Commissioner of Public Works
Re: NYS Audit for City of Lackawanna – Garbage Fee Assessment

Thank you for the efforts that were placed into this Audit. We will work with the Council and Mayor to address the changes to code that were noted in the report provided. We will also work to create a process to ensure exemption request applications are reviewed, complete, and appropriate prior to notifying the Treasurer of collection fee changes.

Respectfully,

Anthony DeSantis
Commissioner of Public Works

See
Note 1
Page 11

Anthony DeSantis, Commissioner

Appendix B: OSC Comment on the City's Response

Note 1

Our report did not note changes to the Code as indicated in the City officials' response.

Appendix C: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed City officials and reviewed the City Code to gain an understanding of the garbage collection and fee environment. We also requested all written policies and procedures related to garbage collection assessment and billing from the DPW Commissioner and DPW clerk and were advised there were none.
- We reviewed the 2020 assessment roll to determine the number of garbage fees indicated for each property. We compared the number of assessed garbage fees to the number of units indicated by the property type to identify properties that did not appear to be assessed garbage fees in accordance with the Code. We identified 220 properties that did not appear to have been assessed the correct number of garbage fees.
- We compared 220 properties that were assessed garbage fees that were not consistent for the property type to a list of City employees to determine whether employees received unsupported collection fee adjustments.
- We used our professional judgment to select 33 of the 220 properties that did not appear to have been assessed or billed garbage fees consistent with the Code, including four City employees with unsupported fee adjustments and eight single family properties that were not assessed and billed garbage collection fees. We followed up on these properties through discussions with City officials and reviewing the Online Assessors Reporting System and other supporting documentation to determine whether the assessed fee and property code were incorrect.
- We reviewed all 10 garbage fee adjustment memos filed with the DPW clerk during our audit period and traced them to the 2020 assessment roll and respective 2020-21 tax bills to determine whether the collection fees were assessed and billed appropriately.
- We compared the 2020 assessment roll garbage fee information with the garbage fees billed per the 2020-21 tax bill report, omitting properties previously tested, to identify properties that did not appear to be billed the proper garbage fees. We identified 27 properties with potential discrepancies and reviewed documentation for the garbage fee exemptions applied to these properties during our audit period to determine whether the exemptions were in accordance with the Code and properly supported.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a

reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Council to make the CAP available for public review in the Clerk's office.

Appendix D: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications

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www.osc.state.ny.us/local-government/fiscal-monitoring

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www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

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www.osc.state.ny.us/local-government/required-reporting

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Contact

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