



## Agenda Abstract

### BOARD OF COMMISSIONERS

Meeting Date: March 11, 2024  
Department: Utilities  
Agenda Section: Regular  
Public hearing: No  
Date of public hearing: N/A

#### PRESENTER/INFORMATION CONTACT

Utilities Director K. Marie Strandwitz, PE

#### ITEM TO BE CONSIDERED

**Subject:** Revisit Backflow Assembly Reimbursement Vote of December 12 – Saru Salvi

##### Attachments:

E-mail correspondence from out-of-town resident, current planning board member and past Water and Sewer Advisory Committee member, Saru Salvi

##### Summary:

Staff has prepared this abstract for the request being made by Ms. Salvi who has E-mailed the commissioners and town manager on several occasions (attached) regarding a cross-connection control assembly she installed per town request. She has requested to be placed on the regular agenda to revisit the prior motion taken on Dec. 12, 2023 regarding backflow assembly installation reimbursements for certain customers. This discussion occurred as a separate agenda item after the town ordinance was modified to allow an air gap option at the same meeting.

##### History

After complaints of hardship were heard earlier in 2023 from residents owning in-ground swimming pools, the commissioners motioned that staff and the Water and Sewer Advisory Committee (with customer input) take up modifying the cross-connection control ordinance to allow a lesser or no cost backflow protection option for residential swimming pool owners. Swimming pools are deemed a severe hazard in the town ordinance and the ordinance at the time did not differentiate on the ownership or type of pool. These residential owners had received a compliance letter to install a reduced pressure principle assembly according to the town cross connection control ordinance and as implemented by town staff when pools were being installed.

Recommendations were discussed and ordinance revisions were presented at the Dec. 12, 2023 regular meeting. The commissioners voted to modify the ordinance at this meeting to include an air gap alternative which is a no cost cross connection control method of maintaining a physical separation between the potable water supply and the pool water (or any potentially contaminating body of water). However, even before this concern was presented to the board, seven customers had installed the assembly per the town compliance letter. Ms. Salvi was one who promptly installed the assembly in compliance with the town ordinance. The assembly was previously the only option for swimming pool owners, residential or non-residential.

## Summary of Recent Events

1. In May 2023, the town board directed the Water and Sewer Advisory Committee to discuss and recommend modifications to the ordinance and reimbursement options for those seven customers who complied with the ordinance and installed the assembly before the ordinance was modified.
  - While not a unified recommendation to reimburse, the staff in consultation with the town's attorney and the committee specifically discussed the parameters of reimbursement, which were written in the agenda abstract and discussed with the commissioners on Dec. 12, 2023.
    - These parameters included only reimbursement for the installation and testing costs of the assembly. The town attorney and committee felt there was at least some sort of rational nexus to reimburse, with town funds, the installation and initial testing since the installation of the assembly is for the overall protection of the water supply.
2. During the Dec. 12, 2023, regular meeting on the reimbursement recommendation from the committee, it was verbally explained that the committee recommendation did NOT include removal and restoration costs and why it did not.
  - The mayor also specifically inquired during the discussion if anyone asked about reimbursement for removal costs. The response was yes, one person. The commissioners had no further discussion about changing the committee recommendation on reimbursement for removal costs before the motion to accept the reimbursement terms.
  - After the board motion on the reimbursement whose minutes also reflected that it did not include removal and restoration costs, staff sent out the letters and instructions to the seven impacted customers offering reimbursement as determined in the December motion. The customer letter clearly indicated that removal and restoration was not included.

Staff has already processed six of the seven reimbursement offers for installation and testing. Of these, five have elected to keep the assembly installed for the time being. Staff spoke with the plumbing company for the remaining customer that has not yet submitted their paperwork. This customer's plumber applied for a permit after the town noted to pause the installation and installed the assembly without a permit. The company indicated they had removed the assembly at their own discretion after not receiving a final inspection (due to no permit issuance) and before winter. They only charged this customer their discounted time for the mix up which we will reimburse if the paperwork is received. Thus, only Ms. Salvi has actively chosen to remove her assembly.

**Staff has added points of discussion for consideration below.**

### **Financial impacts:**

Financial impacts are not as critical as the precedent and rational nexus points made below. However, Ms. Salvi is requesting an additional \$1,500 for the removal of the assembly in addition to the \$3,150 she was already reimbursed for the installation and testing. If granted, then it is presumed the same offering would be made to the others and such costs are unknown.

### **Staff recommendation and comments:**

- Ms. Salvi removed the assembly at her own desire and risk knowing that the board had not voted to include removal and restoration costs. She is now requesting an after the fact revision to the vote.
- The town did not require removal of the assembly. It is still a valid protection option.

- The town's goal is to protect the public water supply from potential severe hazards. Even though the air gap method is an option, the assembly provides the utmost protection.
- At least five of the seven customers have indicated they will keep their assembly after reimbursement for installation. This is a relief for staff knowing definite protections are present as we do know that reverse flow through water meters does indeed occur. The remaining customer who has yet to apply for reimbursement did not have a choice to keep or remove the assembly as their plumber removed it because it was installed without a permit and they did not want it to freeze or charge for the insulated box.
- The Committee struggled with the legal ramifications or optics of using public funds to reimburse only certain customers for an assembly that meets current requirements seemed inequitable and was difficult to develop a rational nexus for doing so. The town does not commonly go back to any others when a code is relaxed to offer such reimbursement. Already this was a generous offer by the commissioners.
  - The rational nexus determined for using public funds for just the installation and testing to this group of impacted residential pool owners is that it is for protection of the public water supply, and it is justifiable in this manner.
  - In staff's opinion, it would be very difficult to make a rational nexus to use public funds for lessening the protection of the public water supply when it is still an appropriate cross connection control method AND the town did not require its removal.
- Another reason the committee was split on recommending any reimbursement is that it would upset a long-standing precedent of customer responsibility for cross connection control and equity in application of the requirements as a residential swimming pool is considered a severe hazard if back-flowed into the water supply just as any other potential severe hazard – residential or non-residential – as stated in many industry reference materials. When exceptions are made for certain subsets of people, it becomes very complicated on all fronts.
- Changing the vote would go against the recommendation of the committee who was asked by the commissioners to discuss and present such recommendations, and which were indeed accepted by the commissioners with detailed discussion of the terms.
- Changing the prior vote to include removal and possibly restoration will cause overloaded staff to develop and send another letter of explanation and to process additional reimbursements it did not account for in prior financial impacts and time. Already there have been missteps and confusion through this matter. Already over half of the reimbursements have been processed. No other impacted customer has questioned or complained the board offer of reimbursement under the terms provided. Staff is requesting to consider this matter closed and move on to other pressing items.

**Action requested:**

Discuss whether to modify the prior decision parameters of the backflow assembly reimbursement offer of Dec. 12, 2023.