

RESOLUTION 134-12

A RESOLUTION OF THE WEST MIFFLIN SANITARY SEWER MUNICIPAL AUTHORITY, ALLEGHENY COUNTY, PENNSYLVANIA, ADOPTING TERMINATION AND COLLECTION PROCEDURES AND AUTHORIZING REASONABLE ATTORNEY FEES IN THE COLLECTION OF DELINQUENT SEWAGE ACCOUNTS

WHEREAS, the West Mifflin Sanitary Sewer Municipal Authority (hereinafter referred to as "the Authority") periodically encounters delinquent sewer ratepayers;

WHEREAS, the Authority has determined that it is necessary to file liens and/or municipal claims for the collection of delinquent sewer accounts that are owed to the Authority;

WHEREAS, the Authority uses various provisions of the Municipal Claims and Tax Liens Act, 53 P.S. § 7101 et seq., and the Water Services Act, 53 P.S. § 3102.101 et seq., to collect its delinquent sewer charges;

WHEREAS, the Municipal Claims and Tax Liens Act, 53 P.S. § 7101, et seq., specifically authorizes the costs of collection to be added to a lien for municipal claims;

WHEREAS, the Municipal Claims and Tax Liens Act, 53 P.S. § 7143, specifically authorizes the collection of interest at a rate of 10% per annum upon all municipal claims;

WHEREAS, the Authority desires to set forth the guidelines by which collection procedures will be utilized against delinquent sewer accounts;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the West Mifflin Sanitary Sewer Municipal Authority, this _____ day of _____, 2012, as follows:

Section 1. Termination of Service. The following procedures are hereby established in accordance with 53 P.S. § 3012.101 et seq.:

- 1.1 Notice of Intention to Terminate Water Service. If the delinquent ratepayer neglects or fails to pay, for a period of thirty (30) days from the initial due date, a rental, rate or charge for sewer service, the Authority shall mail or cause to be mailed, by certified mail, return receipt requested, a Shut-Off Notice to the delinquent ratepayer or other entity liable for the account (the "Account Debtor"). An administrative fee actually incurred for mailing the Shut-Off Notice, not to exceed \$50.00, shall be assessed against the Account Debtor. The Notice shall state that failure to pay the past due amount, including penalties and interest, and the \$50.00 administrative fee will result in termination of water service. The Authority shall be responsible with all postage costs associated with said Notice.
- 1.2 Posting of Written Notice. At least ten (10) days prior to the termination of water service, the Authority shall post a written notice on the main entrance of the premises. The Notice shall state that failure to pay the past due amount, including penalties and interest, and the \$50.00 administrative fee will result in termination of water service.
- 1.3 The Authority will comply with all applicable federal, state and local laws, including the Utility Service Tenants Rights Act, when instituting water shut-off procedures against a ratepayer.

Section 2. Creation, Filing and Enforcement of Municipal Liens. If the delinquent ratepayer neglects or fails to pay a rental, rate or charge for sewer service for a period exceeding one hundred twenty (120) days from the initial due date, the Authority may resort to collection procedures pursuant to the Municipal Liens and Tax Claims Act, 53 P.S. § 7101 et seq.

- 2.1 Procedure for Notice of Delinquency and Intention to File Lien. At least 30 days prior to assessing or imposing attorney fees in connection with the collection of a delinquent account and the filing of a lien, the Authority shall mail or cause to be mailed, by certified mail, return receipt requested, a notice of such intention to the ratepayer or other entity liable for the account (the "Account Debtor"). An administrative fee actually incurred for mailing the notice of delinquency, not to exceed \$50, being a cost of collection under the Municipal Claims and Tax Liens Act, shall be assessed. The Authority shall be responsible with all postage costs associated with said notice.
- 2.2 Undeliverable Notice of Delinquency and Intention to File Lien. If the certified mail notice is undelivered, then, at least 10 days prior to the assessing or imposing such attorney fees, the Authority shall mail or cause to be mailed, by first-class mail, a second notice to such account debtor.

2.3 All notices required by this article shall be mailed to the account debtor's last known post office address as recorded in the records or other information of the District, or such other address as it may be able to obtain from the County Office of Assessment and Revision of Taxes.

2.4 Each notice as described above shall include the following:

2.4(A) The type of sewage rate or other charge, the date it became due and the amount owed, including penalty and interest;

2.4(B) A statement of the Authority's intent to impose or assess attorney fees within 30 days after the mailing of the Notice of Delinquency, or within 10 days after the mailing of the second notice pursuant to Section 2.2 above;

2.4(C) A statement of the Authority's intent to file a lien within 30 days after mailing of the Notice of Delinquency, or second notice if the Notice of Delinquency was undeliverable pursuant to Section 2.2;

2.4(D) The manner in which the assessment or imposition of attorney fees may be avoided by payment of the account; and

2.4(E) The place of payment for accounts and the name and telephone number of the Authority's representative designated as responsible for collection matters.

2.5 The amount of fees determined as set forth below shall be added to and become part of the Claim or Claims in each proceeding as provided by the Act and as provided herein.

2.6 Any administrative fee actually incurred in the preparation of the Notice of Delinquency, not to exceed \$50, being a cost of collection under the Municipal Claims and Tax Liens Act, shall be assessed against the property as part of the lien.

Section 3. CHARGES, EXPENSES, AND FEES APPROVED:

3.1 The Authority hereby approves the following schedule of charges, expenses and fees (hereinafter collectively referred to as "Fees") in connection with the collection of

accounts, which is hereby determined to be fair and reasonable compensation for the services set forth below, all in accordance with the principles set forth in Section 3(a.1) of the Municipal Claims Law as added by Act No. 1 of 1996 (the "Act").

- 3.2 The Fees established, assessed, and collected hereunder shall be in addition to the record costs, Section 4, Attorney Fees Approved, as set forth below, and shall be payable in full before the discharge or satisfaction of any Claim. The schedule of fees is separate and distinct from any amounts imposed by the Sheriff, Prothonotary, Court or any other public office in connection with the collection of the Authority's Claims.

FEES:

3.3 Title Search. In any enforcement proceeding, the actual cost of a title search in an amount not to exceed \$250.00 shall constitute a reasonable expense for each title

search necessary for the initiation of each proceeding and compliance with Pa. R.C.P. 3129. The sum not to exceed \$50.00 shall constitute a reasonable expense for each bring-down or update of the title search in connection with entry of judgment, issuance of execution, listing for sale, or other action.

3.4 There shall be added to the above amounts the reasonable out-of-pocket expenses of counsel in connection with each of these services, such as for non-Sheriff's service of process or investigation of the whereabouts of interested parties, as itemized in the applicable counsel bills, which shall be deemed to be part of the fees.

3.5 The amount of fees determined as set forth above shall be added to the Authority's claim in each account.

Section 4. ATTORNEY FEES APPROVED:

4.1 FLAT FEE MATTERS. The following schedule of Attorney fees is hereby adopted and approved as reasonable Attorney fees pursuant to Act 1 and Act 20 for all matters described, which fees shall be awarded to the Authority, its agents, counsel or assigns in each action initiated pursuant to the Act for the collection of unpaid Claims. The account debtor's obligation to pay the full amount of the flat fee for each phase of each action shall accrue upon the initiation of any aspect of each phase. The full amount of each flat fee for each prior phase of the proceeding shall carry over and be due on a cumulative basis together with the flat fee for each subsequent phase.

4.1(A) Preparation and Service of Writ of Scire Facias. The sum of \$450.00 shall constitute reasonable Attorney fees for the initiation of each proceeding and shall include preparation and filing of the Praeipue for Writ of Scire Facias, Sheriff's direction for service, Notice pursuant to Pa. R.C.P. § 237.1 and the preparation and filing of the Praeipue to Settle and Discontinue the proceeding. The above does not include:

4.1(A)(1) Federal Tax Liens, Judgments and Mortgages. Where there are federal tax liens, federal judgments, federal mortgages or other record federal interests, the sum of \$200.00 shall constitute reasonable Attorney fees for all matters necessary to properly notify and serve the United States with all required additional Notice and the presentation of related motions to Court.

4.1(A)(2) Alternative Service of Legal Proceedings. In the event that a Special Order of Court is necessary to serve original process or any other pleading,

notice, court order or other document, the following amounts shall constitute reasonable Attorney fees as follows:

4.1(A)(2)(i): Investigation of Defendant(s) whereabouts and preparation of Affidavit of Diligent Search - \$100.00.

4.1(A)(2)(ii): Preparation and Presentation of Motion for Alternative Service, and delivery of the Order of Court, along with appropriate directions to the Sheriff for service - \$200.00.

4.1(B) Entry of Judgment. The sum of \$225.00 shall constitute reasonable Attorney fees in connection with the entry of judgment which shall include preparation and filing of the Praeipce to Enter Judgment, Notices of Judgment, Affidavit of Non-Military Status, and the Praeipce to Satisfy Judgment.

4.1(C) Writ of Execution. The sum of \$700.00 shall constitute reasonable Attorney fees for preparation of all documents necessary for each execution upon any judgment pursuant to the Act. This sum shall include the preparation and filing of the Praeipce for Writ of Execution, all Sheriff's documents, preparation and service of Notices of Sheriff's Sale, staying the Write of Execution, and attendance at one (1) Sheriff's Sale.

4.1(C)(1) Postponements. The sum of \$100.00 shall constitute reasonable Attorney fees for each continuance of Sheriff's Sale at the request of the defendant.

4.1(D) Sale Pursuant to §31 of the Act, 53 P.S. §7281. The sum of \$700.00 shall constitute reasonable Attorney fees for the sale of property pursuant to §31 of the Act, 53 P.S. §7281, including preparation and service of necessary documents, court appearances, attendance at Sheriff's Sale and preparation of proposed schedule of distribution of the proceeds realized from such Sale.

4.1(E) Installment Payment Agreement. The sum of \$100.00 shall constitute reasonable Attorney fees for the preparation of each written installment payment agreement.

4.1(F) Motions. The sum of \$200.00 shall constitute reasonable Attorney fees for the preparation, filing, and presentation of motions, other than for alternative

service, which shall include, but are not limited to, motions to reassess damages, motions to amend caption, motions to continue the Sheriff's Sale.

4.1(G) Magistrate Hearing. The sum of \$200.00 shall constitute reasonable Attorney fees for the preparation and filing of a complaint at the magistrate level, which shall include court appearance at the initial magistrate hearing. Additional hearings resulting from postponements entered on behalf of the defendant shall result in an additional fee of \$200.00 per hearing. A postponement shall be considered a defense postponement if the defendant is not prepared at the hearing to present his/her case, enter into an installment payment agreement, or pay the delinquent amount in its entirety. The Authority shall be responsible for advancing costs associated with collection efforts at the Magistrate.

4.2 HOURLY RATE MATTERS. The following schedule of Attorney fees is hereby adopted and approved as reasonable Attorney fees pursuant to Act 1 and Act 20 for all matters described, which fees shall be awarded to the Authority, its agents, counsel or assigns as compensation in all contested matters, and in all other matters not specifically referenced in Section 4.1, above, undertaken in connection with the collection of Claims:

3.2(A)	Senior Attorneys	\$185.00 per hour
3.2(B)	Junior Attorneys	\$165.00 per hour
3.2(C)	Paralegals	\$100.00 per hour
3.2(D)	Law Clerks	\$85.00 per hour

each as recorded and charged in units of 1/10th of an hour for all time devoted to enforcement and collection of the Authority's Claims. Counsel, whether duly employed or duly appointed by the Authority, its agents or assigns, shall not deviate from this fee schedule absent a subsequent resolution amending the same. Hourly rate matters include, but are not limited to, any matters where any defense, objection, motion, petition or appearance is entered in any phase of any proceeding by or on behalf of any defendant or other interested party.

Section 5. Effective Date and Retroactivity.

5.1 This Resolution shall take effect on the date of enactment set forth below and with respect to attorney fees pursuant to the aforementioned sections of this Resolution shall apply to all municipal claims, municipal liens, Writs of Scire Facias, Judgments, or Executions filed on or after December 19, 1990, or as otherwise provided by law.

5.2 In no event shall the Authority's right to charge and collect reasonable attorney fees pursuant to the aforementioned sections of this Resolution be impaired by the fact that any Claim may also include an attorney commission of five percent (5%) for Claims filed prior to December 19, 1990. Any attorney fees assessed and collected under this or any prior resolutions pursuant to Act 1 shall be in addition to any five percent (5%) commission previously included in any Claim or judgment thereon.

5.3 Attorney fees and expenses incurred in pending enforcement proceedings prior to the effective date of this Resolution, pursuant to a prior resolution adopted under Act 1, but not collected, shall remain due and owing in accordance therewith, and shall be incorporated in any future statement, Claim, pleading, judgment or execution. Attorney fees and expenses in any pending or new action incurred after the effective date of this Resolution shall be incurred, charged, and collected in accordance with the schedules and procedures set forth in this Resolution.

5.4 The charges, expenses and fees set forth in this Resolution relate to all unpaid Claims in favor of the Authority, its agents and assigns, and shall be retroactive to the date of each Claim.

Section 6. Assignment. The Authority assigns the provisions of this Resolution to any assignee of its Claims unless the assignment limits the assignee's ability to collect such amounts. The Authority and its duly authorized agents and their counsel shall retain all rights to charge reasonable attorney fees, charges, expenses, and fees in accordance with the provisions of this Resolution in actions commenced under the Act and for Servicing any Claims retained by the Authority.

Section 7. Severability. If any one or more of the provisions or terms of this Resolution shall be held invalid for any reason whatsoever, then, such provision or terms shall be deemed severable from the remaining provisions or terms of this Resolution to the maximum extent possible and shall in no way affect the validity or enforceability of any other provisions hereof.

Section 8. Repealer. Any resolution of the Authority conflicting with this Resolution shall be and the same is hereby repealed in so far as the same affects this Resolution.

Section 9. Amendments. The Authority may, by resolution, from time to time, establish additional collection procedures, servicing charges, expenses, and fees, and, if it so desires, alter, amend and supplement the procedures, servicing charges, expenses, and fees established herein for the collection of delinquent accounts.

RESOLVED AND ADOPTED by the Board of Directors of the West Mifflin Sanitary Sewer
Municipal Authority this_____ day of March, 2012.

ATTEST:

West Mifflin Sanitary Sewer Municipal Authority