

**TOWN OF HOT SULPHUR SPRINGS, COLORADO
ORDINANCE NO. 2012-5-385**

**AN ORDINANCE REPEALING AND READOPTING SECTION
7-4-19 OF THE TOWN CODE CONCERNING WATER AND SEWER
BILLS, PAYMENT, AND DELINQUENT WATER AND SEWER
ACCOUNTS AND PENALTIES THEREFOR**

WHEREAS, Section 31-35-615, C.R.S., authorizes the Town to set and collect by ordinance rates and charges for connection with and use of the Town sewer or sewerage systems as may be just, reasonable and necessary; and

WHEREAS, Section 7-4-19 of the Town Code concerns the payment and penalty for late payment of water and sewer bills; and

WHEREAS, the Town finds that the current penalty provisions for late payment fail to adequately compensate the Town for costs of collection of such delinquent accounts; and

WHEREAS, the Town Board of Trustees desires to amend Section 7-4-19(C) to clarify and increase the penalties that are imposed for delinquencies in order to incentivize timely payment and to compensate the Town for actual costs incurred in collecting such delinquent accounts.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF HOT SULPHUR SPRINGS, COLORADO, THAT:

Section 1. Repeal and Readoption of Section 7-4-19. Section 7-4-19 of the Town Code is hereby repealed and readopted to read as follows in full:

7-4-19: WATER AND SEWER BILLS - PAYMENT - PENALTY.

- (A) Water meters shall be read between the fifteenth (15th) and twenty-fifth (25th) days of each third (3rd) month as nearly as possible and bills shall be mailed at the end of that month as nearly as possible.
- (B) Sewer charges shall be payable quarterly and shall be added to and made part of the quarterly water bill.
- (C) All accounts for water and sewer shall be kept in the name of the owner of the property and the owner or his legal authorized agent shall be held responsible for water and sewer bills. The Town will mail copies of bills to renters or tenants other than the property owner at the written request of the property owner. However, in no event shall that relieve the owner from the obligation to satisfy the water and sewer bills.
- (D) All water and sewer bills shall be due thirty (30) days after the mailing date of the bill. A check (including bank drafts and other forms of non-cash payment) for the amount due will be accepted but will not be credited until the check has cleared the bank and the amount is credited to the Town's account. If any check presented to the Town for payment of fees and charges is returned from the bank as a result of no payment due to insufficient funds or any other reason, such check amount shall be collected, together with an administrative processing charge of twenty-five dollars (\$25.00), in the same manner as provided in subsection (E) of this Section.
- (E) Delinquencies, penalties and collection. Any bill not paid in full within thirty (30) days of mailing the bill shall be deemed delinquent. The Town Board of Trustees may, in its sole discretion and upon written request of the delinquent account holder showing good cause, waive all or part of any penalty imposed hereunder for failure to timely pay any water or sewer bill. In the event an account is delinquent, the Town may initiate the following late fee, interest and collection procedures:

(1) The Town shall assess interest on any delinquent amounts on a monthly basis in the amount of one percent (1.0%) per month or twelve percent (12%) per annum.

(2) Thirty (30) days delinquent. The Town shall assess a monthly late fee equivalent to 10% of the delinquent bill amount and shall mail, by regular mail, to the property owner at its billing address, a notice of delinquency. The notice shall notify the property owner that he or she has thirty (30) days from the date of said notice to pay the total amount due, including accumulated charges, fees and interest, in full, in cash or certified funds.

(3) Sixty (60) days delinquent. If the delinquency and all accumulated charges are not paid in full within thirty (30) days of the date of notice provided under subparagraph (2) above (sixty (60) or more days delinquent from the original due date), the Town shall assess a late fee equivalent to 10% of the delinquent bill amount and shall send a certified letter for the total amount due, including all accumulated charges, fees and interest. The certified letter shall notify the owner that he or she has thirty (30) days from the date of the letter to pay the total amount due, in full, in cash or certified funds.

(4) Ninety (90) days delinquent. If the delinquency and all accumulated charges are not paid in full within thirty (30) days of the date of the certified letter provided under subparagraph (3) above (ninety (90) or more days delinquent from the original due date), the Town shall assess an additional \$50 administrative fee in addition to all accrued interest authorized under subparagraph (1) and the late fee authorized by subparagraph (3).

(5) At any time after an account becomes delinquent for ten (10) days or more, the Town may terminate water service to the property. The Town Clerk shall send by regular mail to the owner of the property a notice advising that, if full payment is not received by a specified date, said date to be not less than ten (10) days after the mailing date of the letter, a Town employee shall personally deliver to the property a red tag, said tag to be fastened to an entrance of the premises. The red tag shall demand full payment of the delinquent bill within two (2) days following the date of delivery of the red tag. If payment is not received by the specified date, water service may be terminated and, if terminated, shall not be reinstated until payment of all funds due, including the billed amounts for service and usage and all accrued interest and late fees and including a fifty dollar (\$50.00) termination and a fifty dollar (\$50.00) reconnection fee have been paid (said fees shall be double for users outside the corporate limits of the Town). The mailed notice shall specify when the owner or occupant of a water using unit may appear before the Town Clerk to contest the alleged delinquency. If payment is not made within the time specified in the red tag and if the termination or collection procedure is not stopped by the Town Clerk as provided above, water service to the property may be terminated and remain terminated until all fees and charges have been paid. Unless a previous check has been returned as a result of insufficient funds, a check for the amount due will be accepted but will not be credited until the check has cleared the bank and the amount is credited to the Town's account.

(6) The rates and charges due and unpaid including any penalties authorized hereunder, as well as an administrative fee for recording a lien in the amount of thirty five dollars (\$35.00), may be certified by the Town to the Board of County Commissioners of the County of Grand and, until paid, shall constitute a lien against the served property for all delinquent fees, charges, interest and penalties. All such amounts due constitute a lien which is prior and superior to all other liens, claims, titles and encumbrances, whether prior in time or not, and shall remain a lien on the property from the date such fees are delinquent until the same are paid. The failure of the Town to record such lien with the County shall not affect the validity or enforceability of the Town's statutory lien rights or any other remedies the Town may have to collect the amounts due and owing. The property owner shall be liable for all water and sewer services furnished and fees and charges for said property. The lien against the property or liability against the owner may be enforced by the Town by action of law or an action to enforce the lien. The Town shall in no event be required to look to any person other than the owner of the real property served by the water and sewer system.

(7) If the owner or occupant of the delinquent premises appears before the Town Clerk and presents evidence satisfactory to the Town Clerk that the alleged delinquency is erroneous, the Town Clerk shall have the authority to stop all procedures that may have

been initiated for the termination of services or collection of delinquent amounts. The decision of the Town Clerk shall be final and shall be put in a written, dated format. The Town Clerk shall advise the Board of Trustees of all terminations of water service.

(8) No error or mistake in Town records or billings, past or present, shall constitute an estoppel or waiver or otherwise prevent the Town from billing, collecting or enforcing the correct amount of any amount owed.

(9) No change in ownership or occupancy shall affect the application of this Section or any of the provisions of this Section, and the failure of any owner to learn that he or she purchased any property against which a lien for water or sewer service or tap fee exists shall in no way affect the lien against any property for such payment in full or be the basis for any claim of any kind whatsoever against the Town for refusing to turn on water service until all charges authorized hereunder are paid in full.

(10) Record of payments. The Town will maintain records of all water and sewer fees and charges paid and an up-to-date record of delinquent charges, in accordance with accepted accounting procedures.

Section 2. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this Ordinance are not determined by the court to be inoperable. The Town Board of Trustees declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

Section 3. No Existing Delinquency or Violation Affected. Nothing in this Ordinance shall be construed to affect any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any ordinance hereby repealed by this Ordinance, or any just or legal right or remedy of any character impaired, or affected by this Ordinance.

Section 4. Effective Date. This Ordinance shall become effective thirty days after publication following final passage..

INTRODUCED, READ, ADOPTED, APPROVED AND ORDERED PUBLISHED BY THE TOWN BOARD OF TRUSTEES OF THE TOWN OF HOT SULPHUR SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD ON THE 14th DAY OF JUNE, 2012, BY A VOTE OF 4 IN FAVOR, 3 AGAINST, and 0 ABSTAINING.

TOWN OF HOT SULPHUR SPRINGS

By: Robert McVay
Robert McVay, Mayor Pro Tem

I hereby certify that the above Ordinance was introduced and adopted by the Town Board of Trustees of the Town of Hot Sulphur Springs, Colorado, at its meeting of June 14th, 2012, and ordered published by *Sky Hi* newspaper on June 21st, 2012.

SEAL

ATTEST:
By: Sandy White
Sandy White, Town Clerk

Publication Date: June 21st, 2012
Effective Date of Ordinance: July 21st, 2012 (30 days after publication)

