

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46

**EXHIBIT A**

**Sec. 22-30. – Payment; termination of service for failure to pay charges; lien for unpaid charges; appeals; restoration of Service.**

(a) Payment Due. All charges for water and wastewater services (“Utility Services”), including surcharges and billable repairs, shall be due and owing by the date issued on the statement. If, after 30 days from the date a charge for Utility Services wastewater service or connection fee is due and owing, the customer has not made full payment, all amounts due and owing and unpaid shall be increased by a penalty of ~~two~~ five percent (“delinquent charges”). All payments received shall be applied first to the most recent charges then due and owing. In addition, the customer's water service may be terminated as provided for herein in accordance with the procedures set out in chapter 34, article I.

(b) ~~If delinquent charges remain unpaid after substantial compliance with the procedures set out in chapter 34, article I, those delinquent charges shall constitute a lien against the real property served.~~ The city is authorized to perfect a utility lien upon property, other than a homestead protected by the state constitution, belonging to a customer whose account for wastewater service is more than 90 days past due delinquent. This is cumulative of any other remedies, methods of collection or security available to the city under state law or ordinance. This section does not affect any authority of the city to refuse service when delinquent charges exist. A lien shall:

- (1) Be executed by the mayor and acknowledged by a notary public of the state;
- (2) Be recorded in the real property records of the county where the property is located;  
and
- (3) Contain a legal description of the property and the utility's account number for the delinquent charges. The lien may include penalties, interest and collection costs.

Should additional delinquent charges be incurred subsequent to the date of the original lien's execution, a correction lien may be executed and filed, fixing the additional delinquent charges. The correction lien, when filed of record, shall relate back to the date of recording of the original lien and shall become a part of the original lien.

The city attorney, at the request of the city council, may file suit to judicially foreclose the lien in a state court of competent jurisdiction. The city administrator is authorized to execute a release of the lien when all delinquent charges which existed have been fully paid. After execution, the city administrator shall deliver the release to the customer to be filed in the deed or lien records of the county in which the property is located.

(c) Notice of Termination of Service. A customer whose account is subject to termination for nonpayment of a delinquent account shall be given written notice not less than seven days prior to the date of the proposed termination. The notice shall:

1           (1) Be deemed given when sent by mail or hand delivered to the billing address of the  
2           customer and to the address of the property owner, if different from that of the  
3           customer.

4  
5           (2) When service is billed to a customer other than the occupant of the premises, the  
6           delinquency notice shall advise the occupants, in writing, that:

7  
8           i. There is a past due balance for the premises;

9  
10          ii. If the customer has not paid the delinquent bill or taken an appeal in  
11          accordance with this article by the proposed termination date, service shall  
12          be terminated; and

13  
14          iii. The occupant may pay the customer's bill, if so desired.

15  
16          (3) State the reason for the proposed termination.

17  
18          (4) State in bold print the customer's right to a hearing before such termination occurs.

19  
20          (5) State that, if the customer desires a hearing, he must request a hearing by providing  
21          written notice of such request to the city secretary by U.S. First Class Mail or hand  
22          delivery to the city's administrative offices not later than seven days from the date  
23          of mailing or date of personal delivery of the notice of termination.

24  
25          (d) Appeals. Should additional delinquent charges be incurred subsequent to the date of the  
26          original lien's execution, a correction lien may be executed and filed, fixing the additional  
27          delinquent charges. The correction lien, when filed of record, shall relate back to the date  
28          of recording of the original lien and shall become a part of the original lien.

29  
30          (1) A customer who alleges that a charge for water service is incorrect may give notice of  
31          appeal of the charge to the city secretary or his designee by written notice mailed or  
32          hand delivered to the city's administrative offices to the attention of the city secretary.  
33          Only the following shall constitute bases of an appeal:

34  
35          i. An alleged error in the volume of water charged, whether because of a  
36          defective meter, a leak or malfunction in piping or equipment belonging to  
37          the city, or mistake in meter-reading;

38  
39          ii. An error in the applicable charge, whether the type of usage or size of tap;  
40          or

41  
42          iii. An error in any charge not based on volume of use, such as tap fee or capital  
43          recovery fee.

44  
45          Complaints about rates adopted by the city council and applied to the customer shall  
46          not constitute a proper basis for an appeal.

1  
2 (2) The city council or its designee (hereafter referred to as the "hearing officer") shall  
3 schedule a meeting where the appellant and all others with knowledge of relevant facts  
4 may present evidence relevant to the appeal. Notice of the date and time of the meeting  
5 shall be forwarded by U.S. First Class Mail to the appellant not less than seven days  
6 before the meeting. In the event that, after the start of such meeting, the meeting is  
7 continued to a later date, written notice of such subsequent meeting shall be forwarded  
8 to the appellant in like manner not less than three days prior to the subsequent meeting.  
9 The city council may refer the appeal to the city's utility commission to act as the  
10 hearing officer and may provide in such referral for the utility commission to determine  
11 relevant facts and recommend a decision to the city council or conduct the entire appeal  
12 and render a final decision.

13  
14 (3) The following rules shall apply to such appeals:

- 15  
16 i. A record shall be made indicating the reason for the appeal, the persons present  
17 during any meeting to consider the appeal, and the decision or recommendation,  
18 as applicable, of the hearing officer.  
19  
20 ii. The hearing officer shall determine what information is relevant to and may be  
21 considered in connection with the appeal and shall be the sole judge of the  
22 evidence and the credibility of the witnesses and the facts.  
23  
24 iii. When a recommendation for decision is provided by the utility commission, the  
25 city council shall consider the recommendation in an open meeting. The  
26 appellant may make a presentation, subject to any applicable time limits on  
27 public presentations, but no opportunity to present new information shall be  
28 provided and no rehearing of any matter presented to the utility commission  
29 shall be conducted.  
30  
31 iv. If the decision is adverse to the customer, the customer shall be advised as to  
32 what action must be taken to prevent termination of service.  
33  
34 v. If the decision is in favor of the customer, in whole or in part, the water utility  
35 shall be advised as to what corrective action should be taken. Wastewater  
36 charges may also be adjusted in the event of a determination that the customer  
37 has improperly been charged for water use during any applicable winter  
38 averaging months.  
39  
40 vi. The final decision maker shall provide for a period of time, not less than five  
41 business days following the date of decision, for the appellant to pay the amount  
42 determined to be past due. When a decision is rendered in a manner other than  
43 an announcement at a meeting at which the appellant is present, written notice  
44 of the decision shall be forwarded to the appellant by U.S. Certified Mail, return  
45 receipt requested, and by U.S. First Class Mail. When notice of a decision is  
46 required to be mailed to the appellant, the period of time by which a past due

1 amount found to be owing must be paid shall not begin to run until the date  
2 notice of the decision is forwarded as provided by this subsection.

3  
4 (4) During the pendency of the appeal, the customer's water utility service shall be  
5 continued.

6  
7 (e) Restoration of Service. ~~The city attorney, at the request of the city council, may file suit~~  
8 ~~to judicially foreclose the lien in a state court of competent jurisdiction. The city~~  
9 ~~administrator is authorized to execute a release of the lien when all delinquent charges~~  
10 ~~which existed have been fully paid in compliance with section 34-74. After execution, the~~  
11 ~~city administrator shall deliver the release to the customer to be filed in the deed or lien~~  
12 ~~records of the county in which the property is located.~~

13  
14 (1) Service disconnected for nonpayment will be restored after payment of the past due  
15 balance owed, plus the penalty, disconnection, and reinstatement charges.

16  
17 (2) In the event water service was terminated prior to a valid hearing of an appeal, water  
18 service shall be restored upon payment of the reinstatement charge.

19  
20 (3) If the outcome of an appeal is in favor of a water customer, the reinstatement charge  
21 shall be either refunded to the customer or credited to his bill.

22  
23 **Sec. 34-1. - Definitions.**

24  
25 (a) The following words, terms and phrases, when used in this chapter, shall have the meanings  
26 ascribed to them in this subsection, except where the context clearly indicates a different  
27 meaning:

28  
29 *Billing cycle* means the interval of approximately 30 days between successive meter  
30 reading dates.

31  
32 *Customer* means any person having city water utility service at any specified premises.

33  
34 *Utility Services* means water and wastewater services.

35  
36 ~~*Presentment* means the mailing of notice of a charge, if such notice is mailed, or the~~  
37 ~~personal delivery of such notice.~~

38  
39 (b) Terms not defined herein shall be construed in accordance with customary usage.

40  
41 **Sec. 34-69. - ~~Delinquent accounts~~ Payment; termination of service; lien for unpaid charges;**  
42 **appeals; restoration of service.**

43  
44 (a) ~~Any charge for water service which is not paid in full within 30 days of the date of~~  
45 ~~presentment of the charge by the city to the user of the water service shall be considered~~  
46 ~~delinquent.~~

1  
2 (b) ~~The date of presentment shall be the date of mailing notice of the charge, if such notice~~  
3 ~~is mailed to the user, or, if such notice is not mailed to the user, the date of presentment~~  
4 ~~shall be the date such notice is delivered to the user.~~

5  
6 (c) ~~Any account which remains wholly or partially delinquent for a period of 30 days after~~  
7 ~~the date any part of the delinquent amount was first due and payable shall have added~~  
8 ~~to it a penalty of two percent of accrued and unpaid charges for water service. All~~  
9 ~~payments received shall be applied first to the most recent charges then due and owing.~~

10  
11 (d) ~~If delinquent charges remain unpaid after substantial compliance with sections 34-~~  
12 ~~72 and 34-73, those delinquent charges shall constitute a lien against the real property~~  
13 ~~served. The city is authorized to perfect a utility lien upon property, other than a~~  
14 ~~homestead protected by the state constitution, belonging to a customer whose account~~  
15 ~~for water service is delinquent and which has not been reinstated in compliance~~  
16 ~~with section 34-75. This is cumulative of any other remedies, methods of collection or~~  
17 ~~security available to the city under state law or ordinance. This section does not affect~~  
18 ~~any authority of the city to refuse service when delinquent charges exist. A lien shall:~~

19  
20 (1) ~~Be executed by the mayor and acknowledged by a notary public of the state;~~

21  
22 (2) ~~Be recorded in the real property records of the county where the property is located;~~  
23 ~~and~~

24  
25 (3) ~~Contain a legal description of the property and the utility's account number for the~~  
26 ~~delinquent charges. The lien may include penalties, interest and collection costs.~~

27  
28 (e) ~~Should additional delinquent charges be incurred subsequent to the date of the original~~  
29 ~~lien's execution, a correction lien may be executed and filed, fixing the additional~~  
30 ~~delinquent charges. The correction lien, when filed of record, shall relate back to the~~  
31 ~~date of recording of the original lien and shall become a part of the original lien.~~

32  
33 (f) ~~The city attorney, at the request of the city council, may file suit to judicially foreclose~~  
34 ~~the lien in a state court of competent jurisdiction. The city administrator is authorized~~  
35 ~~to execute a release of the lien when all delinquent charges which existed have been~~  
36 ~~fully paid in compliance with section 34-75. After execution, the city administrator~~  
37 ~~shall deliver the release to the customer to be filed in the deed or lien records of the~~  
38 ~~county in which the property is located.~~

39  
40 (a) Payment Due. All charges for Utility Services, including surcharges and billable  
41 repairs, shall be due and owing by the date issued on the statement. If, after 30 days  
42 from the date a charge for Utility Services or connection fee is due and owing, the  
43 customer has not made full payment, all amounts due and owing and unpaid shall be  
44 increased by a penalty of five percent ("delinquent charges"). All payments received  
45 shall be applied first to the most recent charges then due and owing. In addition, the  
46 customer's water service may be terminated as provided for herein.

1  
2 (b) The city is authorized to perfect a utility lien upon property, other than a homestead  
3 protected by the state constitution, belonging to a customer whose account for  
4 wastewater service is more than 90 days past due. This is cumulative of any other  
5 remedies, methods of collection or security available to the city under state law or  
6 ordinance. This section does not affect any authority of the city to refuse service when  
7 delinquent charges exist. A lien shall:

8  
9 (1) Be executed by the mayor and acknowledged by a notary public of the state;

10  
11 (2) Be recorded in the real property records of the county where the property is located;  
12 and

13  
14 (3) Contain a legal description of the property and the utility's account number for the  
15 delinquent charges. The lien may include penalties, interest and collection costs.

16  
17 Should additional delinquent charges be incurred subsequent to the date of the original  
18 lien's execution, a correction lien may be executed and filed, fixing the additional  
19 delinquent charges. The correction lien, when filed of record, shall relate back to the  
20 date of recording of the original lien and shall become a part of the original lien.

21  
22 The city attorney, at the request of the city council, may file suit to judicially foreclose  
23 the lien in a state court of competent jurisdiction. The city administrator is authorized  
24 to execute a release of the lien when all delinquent charges which existed have been  
25 fully paid. After execution, the city administrator shall deliver the release to the  
26 customer to be filed in the deed or lien records of the county in which the property is  
27 located.

28  
29 (c) Notice of Termination of Service. A customer whose account is subject to termination  
30 for nonpayment of a delinquent account shall be given written notice not less than seven  
31 days prior to the date of the proposed termination. The notice shall:

32  
33 (1) Be deemed given when sent by mail or hand delivered to the billing address of  
34 the customer and to the address of the property owner, if different from that of  
35 the customer.

36  
37 (2) When service is billed to a customer other than the occupant of the premises,  
38 the delinquency notice shall advise the occupants, in writing, that:

39  
40 i. There is a past due balance for the premises;

41  
42 ii. If the customer has not paid the delinquent bill or taken an appeal in  
43 accordance with this article by the proposed termination date, service  
44 shall be terminated; and

45  
46 iii. The occupant may pay the customer's bill, if so desired.

- 1  
2 (3) State the reason for the proposed termination.  
3  
4 (4) State in bold print the customer's right to a hearing before such termination  
5 occurs.  
6  
7 (5) State that, if the customer desires a hearing, he must request a hearing by  
8 providing written notice of such request to the city secretary by U.S. First Class  
9 Mail or hand delivery to the city's administrative offices not later than seven  
10 days from the date of mailing or date of personal delivery of the notice of  
11 termination.  
12

13 (d) Appeals.  
14

- 15 (1) A customer who alleges that a charge for water service is incorrect may give notice  
16 of appeal of the charge to the city secretary or his designee by written notice mailed  
17 or hand delivered to the city's administrative offices to the attention of the city  
18 secretary. Only the following shall constitute bases of an appeal:  
19  
20 i. An alleged error in the volume of water charged, whether because of a  
21 defective meter, a leak or malfunction in piping or equipment belonging  
22 to the city, or mistake in meter-reading;  
23  
24 ii. An error in the applicable charge, whether the type of usage or size of tap;  
25 or  
26  
27 iii. An error in any charge not based on volume of use, such as tap fee or  
28 capital recovery fee.  
29

30 Complaints about rates adopted by the city council and applied to the customer shall  
31 not constitute a proper basis for an appeal.  
32

- 33 (2) The city council or its designee (hereafter referred to as the "hearing officer") shall  
34 schedule a meeting where the appellant and all others with knowledge of relevant  
35 facts may present evidence relevant to the appeal. Notice of the date and time of  
36 the meeting shall be forwarded by U.S. First Class Mail to the appellant not less  
37 than seven days before the meeting. In the event that, after the start of such meeting,  
38 the meeting is continued to a later date, written notice of such subsequent meeting  
39 shall be forwarded to the appellant in like manner not less than three days prior to  
40 the subsequent meeting. The city council may refer the appeal to the city's utility  
41 commission to act as the hearing officer, and may provide in such referral for the  
42 utility commission to determine relevant facts and recommend a decision to the city  
43 council or conduct the entire appeal and render a final decision.  
44  
45 (3) The following rules shall apply to such appeals:  
46

- 1 i. A record shall be made indicating the reason for the appeal, the persons present  
2 during any meeting to consider the appeal, and the decision or recommendation,  
3 as applicable, of the hearing officer.  
4  
5 ii. The hearing officer shall determine what information is relevant to and may be  
6 considered in connection with the appeal and shall be the sole judge of the  
7 evidence and the credibility of the witnesses and the facts.  
8  
9 iii. When a recommendation for decision is provided by the utility commission, the  
10 city council shall consider the recommendation in an open meeting. The  
11 appellant may make a presentation, subject to any applicable time limits on  
12 public presentations, but no opportunity to present new information shall be  
13 provided and no rehearing of any matter presented to the utility commission  
14 shall be conducted.  
15  
16 iv. If the decision is adverse to the customer, the customer shall be advised as to  
17 what action must be taken to prevent termination of service.  
18  
19 v. If the decision is in favor of the customer, in whole or in part, the water utility  
20 shall be advised as to what corrective action should be taken. Wastewater  
21 charges may also be adjusted in the event of a determination that the customer  
22 has improperly been charged for water use during any applicable winter  
23 averaging months.  
24  
25 vi. The final decision maker shall provide for a period of time, not less than five  
26 business days following the date of decision, for the appellant to pay the amount  
27 determined to be past due. When a decision is rendered in a manner other than  
28 an announcement at a meeting at which the appellant is present, written notice  
29 of the decision shall be forwarded to the appellant by U.S. Certified Mail, return  
30 receipt requested, and by U.S. First Class Mail. When notice of a decision is  
31 required to be mailed to the appellant, the period of time by which a past due  
32 amount found to be owing must be paid shall not begin to run until the date  
33 notice of the decision is forwarded as provided by this subsection.  
34

35 (4) During the pendency of the appeal, the customer's water utility service shall be  
36 continued.  
37

38 (e) Restoration of Service.  
39

- 40 (1) Service disconnected for nonpayment will be restored after payment of the past due  
41 balance owed, plus the penalty, disconnection, and reinstatement charges.  
42  
43 (2) In the event water service was terminated prior to a valid hearing of an appeal,  
44 water service shall be restored upon payment of the reinstatement charge.  
45



1  
2  
3

(3) If the outcome of an appeal is in favor of a water customer, the reinstatement charge shall be either refunded to the customer or credited to his bill.

DRAFT