

CHAPTER 42: SYSTEM USER CHARGES - DELINQUENCY

Flagg Creek Water Reclamation District - System User Charges - Delinquency

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Section

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' 42-1.01 ADOPTING PROVISIONS.

The corporate authorities of the District hereby accept and adopt the provisions of the Clean Water Act, being 33 U.S.C. " 1251 et seq., in so far as it relates to the operation and maintenance, and charging and collection, of user charges for a sanitary district formed and operating under the Sanitary District Act of 1917, 70 ILCS 2405/1 et seq., as modified by the federal grant regulations promulgated by the federal EPA, pursuant to the federal Clean Water Act.
(Ord. 780, passed 11-18-2004)

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' 42-1.02 POWER TO CONDUCT BUSINESS.

The Board of Trustees has full power to pass all necessary ordinances, rules and regulations for the proper management and conduct of the business of the Board and the corporation, and for carrying into effect the objects for which the District was formed. Except in the case of grease trap ordinance violations, such ordinances may provide for a fine for each offense of not less than \$100 or more than \$1,000. Each day's continuance of such violation shall be a separate offense. Fines pursuant to this section are recoverable by the District in a civil action. The District is authorized to apply to the Circuit court for injunctive relief or mandamus when, in the opinion of the Chief Administrative Officer, such relief is necessary to protect the sewerage system of the District.

(Ord. 780, passed 11-18-2004)

' 42-1.03 POWER TO ENFORCE RULES FOR SEWERAGE SYSTEM CONSTRUCTION.

The Board of Trustees of any sanitary district that owns and operates, or that may hereafter own and operate, a sewerage system constructed or acquired under the provisions of any law of this state has the power to make, enact and enforce all needful rules and regulations in the construction, acquisition, improvement, extension, management and maintenance of its sewerage system and for the use thereof.

(Ord. 780, passed 11-18-2004)

' 42-1.04 POWER TO ENFORCE RULES FOR PRESERVATION OF SEWERAGE SYSTEM.

The Board of Trustees of such a sanitary district also has the power to make, enact and enforce all needful rules, regulations and ordinances for the improvement, care and protection of its sewerage system, which may be conducive to the preservation of the public health, comfort and convenience, and to render the sewage of the sanitary district harmless in so far as it is reasonably possible to do so.

(Ord. 780, passed 11-18-2004)

' 42-1.05 POWER TO CHARGE FOR USE AND SERVICE.

(A) The Board of Trustees of the District has the power, by ordinance, to charge the inhabitants thereof for the use and service of its sewerage system and to establish charges or rates for that purpose. The Clean Water Act, being 33 U.S.C. " 1251 et seq., does not provide for a replacement or depreciation fund; however, the federal regulations issued by the Federal EPA, 40 C.F.R. Chapter 1, ' 35.2140, preempt the state statute and, pursuant thereto, automatically include Aoperation and maintenance (including replacement)@. The replacement fund may also be referred to as a Adepreciation fund@.

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(B) A depreciation fund is a fund for such replacements as may be necessary, from time to time, for the continued effective and efficient operation of the system. The depreciation fund shall not be allowed to accumulate beyond a reasonable amount necessary for that purpose, and shall not be used for extensions to the system.

(Ord. 780, passed 11-18-2004)

' 42-1.06 CHARGES AND RATES.

Charges or rates have heretofore been established, revised and maintained by ordinance and become payable as the Board of Trustees may determine by ordinance. Such charges or rates shall be liens upon the real estate upon or for which sewerage service is supplied; provided, however, except for the liens heretofore established by said Ordinance 405, which was amended by Ordinance 471 and incorporated in ' 28-1.07, such liens shall not attach to such real estate until such charges or rates have become delinquent, as provided by the ordinance of the sanitary district fixing a delinquency date.

(Ord. 780, passed 11-18-2004)

' 42-1.07 DELINQUENT RATES.

A rate or charge is delinquent if it is more than 30 days overdue.

(Ord. 780, passed 11-18-2004)

' 42-1.08 LIENS.

(A) Except for the liens heretofore established by said Ordinance 405, which was amended by Ordinance 471 and incorporated in ' 28-1.07, a lien authorized hereunder shall be created only if the District sends to the owner or owners of record of the real estate, as referenced by the taxpayer=s identification number:

(1) A copy of each delinquency notice sent to the person who is delinquent in paying the charges or rates or other notice sufficient to inform the owner or owners of record, as referenced by the taxpayer=s identification number, that the charges or rates have become delinquent; and

(2) A notice that unpaid charges or rates may create a lien on the real estate under this section.

(B) Except for the liens heretofore established by said Ordinance 405, nothing in this section shall be construed to give the sanitary district a preference over the rights of any purchaser, mortgagee, judgment creditor or other lien holder arising prior to the filing in the office of the Recorder of the county in which such real estate is located, or in the office of the registrar of titles of such county if the property affected is registered under the torrens system, of notice of said lien.

(Ord. 780, passed 11-18-2004)

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The notice shall consist of a sworn statement setting out:

(A) A description of the real estate sufficient for the identification thereof, upon or for which the sewerage service was supplied;

(B) A copy of the District=s user charge billing showing the name of the use and the amount or amounts of money due for such sewerage service; and

(C) The date or dates when such amount or amounts became delinquent.
(Ord. 780, passed 11-18-2004)

' 42-1.10 COPY OF NOTICE OF LIEN.

A copy of the notice of the lien shall be sent to the owner or owners of record of the real estate, as referenced by the taxpayer=s identification number.

(Ord. 780, passed 11-18-2004)

' 42-1.11 FORECLOSING LIEN.

The District shall have the power to foreclose such lien in like manner and with like effect as in the foreclosure of mortgages on real estate.

(Ord. 780, passed 11-18-2004)

' 42-1.12 DISCONTINUATION FOR PAYMENT.

The payment of delinquent charges for sewerage service to any premises may be enforced by discontinuing either the water service or the sewerage service to that premises, or both.

(Ord. 780, passed 11-18-2004)

' 42-1.13 SERVING NOTICE.

The District shall have the right and authority to serve notice upon any public or municipal corporation or political subdivision of the state furnishing water service to a premises requesting discontinuance of the water service in order to assist the District in collecting delinquent user charges.

(Ord. 780, passed 11-18-2004)

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' 42-1.14 AOPPORTUNITY TO BE HEARD@.

The District shall not request discontinuance of water service before sending a written notice of delinquency to the sewer user (with a copy to the owner) and affording the user/owner an opportunity to be heard. The requirement of an Aopportunity to be heard@ requirement shall be satisfied by giving the user and/or owner ten days after the posting of the delinquency notice to appear at the District office with payment or evidence of payment. Evidence of partial payment indicating a partial payment has been paid subsequent to the date specified in the notice of delinquency may, if circumstances justify it, be grounds for delaying requesting the water service termination, but not in excess of 30 days. Failure of the user or owner to appear at the District office or to exhibit evidence of full payment (cancelled check or receipt executed by District personnel) of the delinquent amount shall constitute the user/owner=s admission that there is no legitimate defense to the District=s right to request the applicable municipality or public utility to discontinue water service.

(Ord. 780, passed 11-18-2004)

' 42-1.15 ACTIONS UPON RECEIVING NOTICE.

Upon receiving written notice from the District that payment of the rate or charge for sewerage service to the premises, identified by P.I.N. and the District and municipality user number, has become delinquent the municipality in which the premises lies shall:

(A) Discontinue that service; and

(B) Not resume water service until receiving a written notice from the District that the delinquency has been removed.

(Ord. 780, passed 11-18-2004)

' 42-1.16 REIMBURSEMENT FOR DISCONTINUANCE.

The District shall reimburse the public, municipal corporation or political subdivision of the state or public utility for the reasonable cost of the discontinuance and the resumption of water service.

(Ord. 780, passed 11-18-2004)

' 42-1.17 CONTRACTING FOR DISCONTINUANCE.

The District may contract with any privately-owned public utility for the discontinuance of water service to a premises with respect to which the payment of a rate or charge for sewerage service has become delinquent.

(Ord. 780, passed 11-18-2004)

Flagg Creek Water Reclamation District - System User Charges - Delinquency**' 42-1.18 REIMBURSEMENT FOR LOST REVENUE AND COST OF DISCONTINUANCE.**

The District shall reimburse the water service provider for any lost water service revenues and the costs of discontinuing water service, and shall indemnify the water service provider for any judgment and related attorney=s fees resulting from an action based on the discontinuance of water service to induce payment of District user charges.

(Ord. 780, passed 11-18-2004)

' 42-1.19 CIVIL ACTION TO RECOVER.

The District also has the power, from time to time, to sue the owner, occupant or user of that real estate, or a person receiving any, direct or indirect, benefit from such services, in a civil action to recover money due for sewerage services, plus a reasonable attorney=s fee, to be fixed by the court; provided, however, that the Sanitary District shall give notice of its intention to bring such action to the owner of record by regular mail not less than seven days prior to filing such civil action. Any judgment entered by the court shall be jointly and severally entered against all parties over whom the court has jurisdiction. The District shall not collect more than the full amount due plus interest, costs and attorney fees.

(Ord. 780, passed 11-18-2004)

' 42-1.20 JUDGMENT IN A CIVIL ACTION.

Judgment in a civil action brought by the District to recover or collect such charges shall not operate as a release or waiver of the lien upon the real estate for the amount of the judgment. Only satisfaction of the judgment or the filing of a release and satisfaction of the lien shall release said lien.

(Ord. 780, passed 11-18-2004)

' 42-1.21 LIEN NOT IN DEROGATION.

The lien for charges on account of services or benefits provided for in this Ordinance 780 and the rights created hereunder shall be in addition to and not in derogation of the lien upon real estate created by and imposed for general real estate taxes and that imposed by Ordinance 405, which was amended by Ordinance 471 and incorporated in ' 28-1.07, of the District, enacted January 23, 1975 and recorder in the office of the Recorder of Deeds of DuPage County, as document R75-19171.

(Ord. 780, passed 11-18-2004)