

ORDINANCE NO. 2010 - 1

**BOROUGH OF MALVERN,
CHESTER COUNTY, PENNSYLVANIA**

AN ORDINANCE AMENDING CHAPTER 101, ENTITLED "FEES," AND SPECIFICALLY SECTION 101-4, AND AMENDING CHAPTER 168, ENTITLED "SEWERS," AND SPECIFICALLY SECTIONS 168-7, 168-8, 168-9, AND 168-10 OF THE CODE OF ORDINANCE OF THE BOROUGH OF MALVERN IN ORDER TO INCREASE THE ANNUAL RENTAL RATE, REAFFIRM AND PRONOUNCE THE AUTHORITY OF THE BOROUGH TO CAUSE WATER SERVICE TO BE SHUT OFF IN THE EVENT OF NON-PAYMENT OF SEWER RENTS, AND TO REAFFIRM AND PRONOUNCE THE AUTHORITY OF THE BOROUGH TO IMPOSE AND COLLECT ATTORNEYS' FEES AND COSTS UNDER SECTION 53 P.S. SECTION 7106 INCURRED IN CONNECTION WITH THE COLLECTION OF MUNICIPAL CLAIMS AND LIENS IN ACCORDANCE WITH THE MUNICIPAL CLAIM AND LIEN LAW, 53 P.S. SECTION 7101, ET SEQ.

WHEREAS, the Borough of Malvern (the "Borough") supplies public sanitary sewer services to, and for the benefit of, properties and the inhabitants thereof which are all located within the Borough; and

WHEREAS, pursuant to the General Municipal Law, and specifically 53 P.S. §§ 2231 and 2232, the Borough is entitled to impose, charge, and collect an annual rental, rate, or charge for the use of said sewer, sewerage system, and/or sewage treatment works; and

WHEREAS, the expense of enforcing the collection of municipal claims and liens is a drain on the Borough's resources and the enforcement and the record keeping and other services related to the collection, filing, satisfaction, assignment and revival of real estate tax liens when absorbed by the Borough would constitute a further demand on the Borough's resources; and

WHEREAS, pursuant to Act 1 of 1996, which amended the Municipal Claim and Lien Law ("Municipal Lien Law"), 53 P.S. Section 7101, et seq., Section 7106 of the Municipal Lien Law (53 P.S. Section 7106) permits the Borough to recover reasonable attorneys' fees in connection with the collection of municipal claims (as defined under the Municipal Lien Law) from the person(s) or property owing such claims; and

WHEREAS, the Borough desires to amend the provisions of its ordinances governing the imposition and collection of sewer rental fees in order to clarify their terms and incorporate the schedule of EDU's by which sewer rentals are calculated and governing the imposition and collection of attorneys' fees in connection with the collection of municipal claims;

NOW, THEREFORE, it is hereby ORDAINED that the provisions of this Ordinance shall become and be made a part of the Code of the Borough of Malvern deleting and repealing existing Sections 101-4 and 168-7 through 168-10 and replacing those Sections with the following:

§ 101-4. Schedule of Fees. [Amended 03-16-2010 by Ord. No. 2010-1]

The Schedule of Fees which follows is determined to be fair and reasonable compensation for the services set forth below:

SCHEDULE OF FEES

Legal Services	Fees
Filing of lien and/or municipal claim	\$185
Title search	\$350 (or actual rate charged by a title insurance agent to perform such service)
Preparation and service of writ of Scire Facias	\$500
Required additional notice and presentation of related motions regarding federal tax liens, judgments, and mortgages	\$185
Alternative service of legal pleading	\$350
Entry of Judgment	\$185
Preparation of writ of execution and Attendance at initial Sheriff's sale	\$875
Review of schedule of distribution and Resolving of distribution issues	\$700
Preparation of installment payment Agreement at taxpayer's/owner's expense	\$350
Services not covered by the above	\$135/hour – Attorney \$75/hour - Paralegal

§ 168-7. Imposition of sewer rental fees. [Amended 03-16-2010 by Ord. No. 2010-1]

A. Sewer rental fees are hereby imposed upon each sewer premises or property located within the Borough for the use of said sewer, sewerage system, and/or sewage treatment works. Sewer rentals fees shall be assessed annually, and collected quarterly, and shall include, but are not limited to, the following charges:

- (1) Minimum annual sewer rental/usage fee. The minimum annual sewer rental fee for sewerer premises or property located within the Borough for the use of said sewer, sewerage system, and/or sewage treatment works shall be \$382.40, per EDU, annually, which sum will be payable, collected, and assessed quarterly in the amount of \$95.60 per EDU, per annual quarter. The allowable usage per annual quarter per sewerer premise or property shall not be in excess of 5,000 gallons of water per EDU in order to qualify for the minimum annual sewer rental/usage fee.
- (2) Usage charges/fees. Any premises and/or property which shall use in excess of 5,000 gallons of water per EDU per annual quarter shall be assessed an excess usage charge/fee of \$4.00 for each additional 1,000 gallons of water used, in addition to the minimum annual sewer rental/usage fee. Any excess usage charges/fees will be assessed upon, payable, and collected each annual quarter, in addition to the minimum quarterly annual sum of \$95.60, for any usage which exceeds 5,000 gallons of water per EDU per quarter as measured by all meters measuring water used at the sewerer premises or property.

B. For purposes of calculating the minimum and excess usage fees above set forth, the number of EDU's attributable to a property and its uses shall be determined by its use category and shall be as follows:

CATEGORY	NUMBER OF EDUs
(1) Single Family Dwellings	1
(2) Two Family Dwellings, for each dwelling	1
(3) Apartment House, for each apartment	1
(4) Mobile Home	1
(5) Retail Store, for each 5000 s.f. of sales area	1
(6) Business or Professional Office:	
a. Ten (10) or less employees	1
b. Each additional ten (10) employees over five (5) or fraction thereof	1/2
(7) Business or Industry:	

a.	Ten (10) or less employees	1
b.	Each additional five (5) employees over ten (10) or fraction thereof	½
(7)	Each improved non-residential property having a Commercial (one horsepower or greater) garbage grinder, for each such grinder	1
(9)	Hotel or Motel (in addition to restaurant facilities) per rental room	½
(10)	Restaurant, club or tavern: without a liquor license, per twenty-five(25) seats or fraction thereof;	1
	with liquor license, per ten (10) seats or fraction thereof	1
(11)	Church	1
(12)	Service station or automobile repair garage:	
a.	Three (3) bays or less (without car wash facilities)	1
b.	Three (3) bays or less (with car wash facilities)	3
c.	Each additional bay over three (3)	1
(13)	School, per each fifty (50) students on an average, school day	1
(14)	Laundromat, per five (5) washers or fraction thereof	1
(15)	Car washing establishment, per bay	1
(16)	Bowling Alley (in addition to restaurant facilities) per six (6) lanes or fraction thereof	1
(17)	Barber Shop:	
a.	Two (2) chairs or less	1
b.	Each additional chair	½
(18)	Beauty Shop	
a.	One (1) chair	1
b.	Each additional chair	½

- (19) Nursing Home:
 - a. Three (3) beds or less 1
 - b. Each additional three (3) beds
or fraction thereof 1
- (20) Retail store with meat and/or vegetable preparation
facilities per employee food preparation station 1

B. Sewer rental fees and charges will be billed quarterly for all users and/or sewer premises or property and, when water service is metered, shall be based on metered water use as measured by all meters measuring water used at the sewer premises or property. The “first annual quarter” is January through March of any given year. The “second annual quarter” is April through June of any given year. The “third annual quarter” is July through September of any given year. The “fourth annual quarter” is October through December of any given year.

- (1) For commercial, industrial, institutional, and/or any non-residential use and/or users, sewer usage and quarterly usage charges/fees, if any, are and will be based on the water meter readings for the same corresponding annual quarter.
- (2) For residential use and/or users with metered water service, sewer usage and quarterly usage charges/fees, if any, are and will be based on the gallons of water used, according to the Water Utility (as that term is defined infra), during the winter water usage period. The “winter water usage period” is the period billed by the Water Utility for, and includes, but is not limited to, October through March of any given year (i.e., the fourth annual quarter of any given year and first annual quarter of any given year which immediately follows). Quarterly usage charges/fees for any given year, beginning with the first annual quarter which is part of said winter water usage period (as defined above), shall be based on one-half of the number of gallons of water used by any sewer premises or property during the winter water usage period.

C. The legal and/or record owner(s) of any sewer premises or property shall be responsible and liable for any and all sewer rental fees and charges, usage charges/fees, and/or any other related or applicable charges, fees, interest, penalties, costs, and/or attorneys’ fees due, assessed, imposed, and/or charged upon or against any sewer premises or property for each and every sewer user and/or sewer premises located thereupon. If there is only one water meter for more than one sewer user and/or sewer premises at a particular property and/or address, the Borough may, but is not required to, at the property owner(s)’ request, bill the sewer user(s) directly, instead of the property owner(s). Such billing of a nonowner(s) sewer user(s) shall not extend any time for payment or relieve the property owner(s) of any duty, responsibility, obligation, and/or liability for and to pay any and all sewer rental fees and charges,

usage charges/fees, and/or any other related or applicable charges, fees, interest, penalties, costs, and/or attorneys' fees due, assessed, imposed, and/or charged upon or against any sewerer premises or property, when and as due. Where there is more than one sewer user(s) at or occupying a sewerer premises or property, or when there is more than one sewerer premises at or on a property, the legal and/or record owner(s) of said sewerer premises or property shall pay both the minimum annual sewer rental/usage fee and any and all usage charge(s)/fee(s) for each and every sewer user(s) and/or sewerer premises at or on his, her, their, and/or its property. In the event that water consumption of a sewerer premises or property which has or contains more than one sewer user(s) or more than one sewerer premises at or on said property, is not metered separately or individually, or if a metered property's use is more than one (1) EDU, the usage charges/fees for any given or applicable annual quarter for any and all sewer user(s) and/or sewerer premises on and/or at the property shall be payable on that number of gallons of water which exceed 5,000 gallons of water per annual quarter of any given year multiplied by the number of EDUs (as set forth in the above schedule) being served at the property. For example, if a property has a use or uses totaling 3 EDUs, it is entitled to service without excess usage charges for up to 15,000 gallons of water per annual quarter (3 EDUs times 5000 gallons) and it is responsible to pay the excess usage charge on that number of gallons of water per that quarter which exceeds 15,000 gallons.

D. If the applicable use classification of any property, sewer user(s), and/or sewerer premises or property changes during any given annual quarter, any difference, increase, and/or change in the minimum annual sewer rental/usage fee and/or usage charges/fees which may or does result from such change shall be prorated on a monthly basis.

E. The sewer rate for each owner whose charge is based upon the number of employees shall be computed on the basis of the average number of employees for the calendar quarter preceding the date for the quarterly bill. The Borough shall be entitled to request from each owner and to receive promptly periodic information as to the number of employees or students at a sewerer property. Information as to employees or students shall be furnished semiannually in the form of a certified list of the names of all employees and independent contractors or students based at the property. In the event that the Borough is not provided with accurate information, including supporting documentation, to determine the number of employees or students and staff using any property or such data as may be necessary to determine a user classification or rate, the Borough's estimate or determination thereof shall be conclusive.

F. The Borough reserves the right to change EDU values from time to time, to add or delete property classifications, and in cases of dispute to determine the property classification of a given property. If a given use is not specifically scheduled, the Borough will apply such use classification as the Borough determines to be most similar to such use.

G. All legal and/or record owners of any sewerer premises or property shall give the Borough written notice of their correct mailing address and any change(s) thereto or therein. Any failure to receive any billings for sewer rental fees and/or usage charges/fees will not excuse any nonpayment and/or late payment of any sewer rental

fees and/or usage charges/fees nor will the same permit or result in any extension of any billing and/or due date of any such sewer rental fee(s) and/or usage charge(s)/fee(s).

§ 168-8. Time and method for paying sewer rental fees. [Amended 03-16-2010 by Ord. No. 2010-1]

Minimum annual sewer rental/usage fee(s) and/or usage charges/fees shall be billed quarterly. Bills for the same shall be dated on or before fifteen (15) days following the end of the corresponding annual quarter (i.e., by April 15th for the first annual quarter, by July 15th for the second annual quarter, by October 15th for the third annual quarter, and by January 15th for the fourth annual quarter). Each bill shall include any and all minimum annual sewer rental/usage fee(s) and/or usage charges/fees for the annual quarter immediately preceding the month of the bill's date. The Borough shall mail quarterly sewer bills on or about the date imprinted thereon. Any and all bills shall be due and payable on their respective dates.

§ 168-9. Penalties and liens for delinquent sewer rental fees; Collection of attorneys' fees and costs under 53 P.S. § 7106 incurred in connection with the collection of delinquent sewer rental fees and related charges. [Amended 03-16-2010 by Ord. No. 2010--1]

A. The expense of enforcing the collection of delinquent accounts for sewer rental fees and related charges is a drain on the Borough's resources, and the enforcement and the record keeping and other services related to the collection, filing, satisfaction, assignment and revival of real estate tax lien and/or municipal claims or liens when absorbed by the Borough would constitute a further demand on the Borough's resources.

B. Pursuant to Act I of 1996, which amended the Municipal Claim and Lien Law ("Municipal Lien Law"), 53 P.S. § 7101, et seq., Section 7106 (53 P.S. § 7106) permits the Borough to recover reasonable attorneys' fees in connection with the collection of municipal claims (as defined under the Municipal Lien Law) from the persons or property owing such claims.

C. The Municipal Lien Law requires that the Borough approve by ordinance a schedule of reasonable attorneys' fees. The Borough hereby adopts and incorporates by reference, as if fully set forth at length herein, the Schedule of Fees ("Schedule of Fees") as contained and set forth in Section 101-4 of the Code of the Borough of Malvern, which the Borough determines to be fair and reasonable charges and fees for the services set forth and outlined therein, and which shall be assessed, imposed, and collected in connection with the collection of unpaid and delinquent sewer rents and/or usage fees and/or charges and the municipal claims therefore, as defined in the Municipal Lien Law, from persons and property owing such sewer rents and/or usage fees and/or charges and municipal claims. The imposition of any fees under this Section shall be in accordance with the requirements of Act 1 of 1996, relating to notice to the owner(s) of the property responsible for the delinquent account, sewer rents and/or usage fees and/or charges.

In addition to the fees listed in the Schedule of Fees at Section 101-4 of the Code of the Borough of Malvern, there shall be added to any of the above amounts imposed,

assessed, or collected, any and all reasonable out-of-pocket expenses and/or costs of counsel in connection with each or any of their or these services, including any and all costs and/or fees of the Chester County Prothonotary and/or Sheriff. The amount of the fees and/or costs determined to be applicable to a particular delinquent account, shall be added to said account.

D. Any and all minimum annual sewer rental/usage fee(s) and/or usage charges/fees also shall be subject to and assessed a penalty of ten percent (10%) thereof if not paid within thirty (30) days of the date the same is due. Interest, at the rate of one-half percent ($\frac{1}{2}$ %) per month, or six percent (6%) per year, or a fraction thereof, shall be added, assessed, and collected upon any minimum annual sewer rental/usage fee(s) and/or usage charges/fees and/or penalty(ies), and/or any portion(s) thereof which are due and owing and unpaid for more than sixty (60) days from its and/or their due date.

E. Any and all minimum annual sewer rental/usage fee(s) and/or usage charges/fees, together with any and all penalties and/or interest thereon, if not paid when due, shall be deemed to be delinquent. Any and all minimum annual sewer rental/usage fee(s) and/or usage charges/fees, together with any and all penalties and/or interest thereon, and/or together with any charges, expenses, and fees incurred in the collection of any delinquent account, including reasonable attorneys' fees under 53 P.S. § 7106 (a.1) and incidental costs added thereto for failure to promptly pay, if applicable, shall be a lien against the sewered premises or property, may be recorded in the Office of the Prothonotary for Chester County, Pennsylvania, and/or may be collected in the manner provided by law for the filing and collection of such municipal claims and/or liens.

§ 168-10. Borough's right to shut off water supply for nonpayment of sewer rental fees. [Amended 03-16-2010 by Ord. No. 2010-1]

If the legal and/or record owner(s) of any sewered premises or property and/or if any sewer user(s) shall neglect or fail to pay any rental, rate or charge for sewer, sewerage, or sewerage treatment service imposed by the Borough, for a period of thirty (30) days from the due date thereof, the Borough Manager, at the request and direction of Borough Council, shall take such action as is necessary to have the water supply to such sewered premises or property shut off until all such overdue rentals, rates, and charges, together with any penalties and interest thereon, shall be paid. In no case, shall the water supply be shut off to any sewered premises or property until ten (10) days after written notice of an intention to do so has been mailed to the person(s) liable for payment of the rentals and charges and, in addition thereto, there also has been posted a written notice at the main entrance to the sewered premises or property. If during such ten (10) day period, the person(s) liable for the payment of the rentals and charges delivers to the Water Utility supplying water to the sewered premises or property a written statement, under oath or affirmation, stating that he, she, they, and/or it has a just defense to the claim, or part of it, for such rentals or charges, then the water supply shall not be shut off until the claim has been judicially determined. The statement also shall contain a declaration under oath or affirmation that it is and/or was not executed for the purpose of delay. Nothing in this Section shall authorize the Water Utility to shut off or deny water service to any lessee of a sewered premises or property because a previous lessee failed to pay either the water or sewer service rate, rental, or charge. If more than

one sewer user(s) and/or sewer premises is located at a property which is under common ownership and there is only one water service and/or supply, the Borough may shut off or deny the water service if, and for, any delinquent sewer rentals and/or other fees and/or charges due and owing on the property. The Borough shall pay to the Water Utility the reasonable additional clerical and other expenses incurred by the Water Utility in providing such services. The Borough in requesting and directing the shut off of water shall pay to the Water Utility the cost of such shut off and the estimated loss of water revenues resulting from such shut off. In the event the Borough shall incur any costs and/or expenses, including, but not limited to, any fees, charges, and/or other sums and/or payments to the Water Utility and/or any of its successors and/or assigns which provide water service within the Borough, because of, in connection with, and/or related to the shut off of any water service to any sewer premises or property, all such costs and/or expenses shall be borne by and paid by the owner(s) of the sewer premises or property and/or the sewer user(s) to whom the sewer, sewerage, or sewage treatment service is provided and/or supplied. All such costs and/or expenses shall be added to the total amount due prior to the reinstatement of any water and/or sewer service and any such costs and/or expenses owed to the Borough shall also be added to the amount of any lien(s) against the sewer premises or property to which the delinquent sewer service was provided and/or supplied. The term "Water Utility" shall mean Aqua Pennsylvania, its successor(s) and/or assign(s), and/or any other duly authorized and regulated public utility company engaged in the supplying of water or water service to properties in the Borough of Malvern.

Passed by Borough Council this day of , 2010

Woody Van Sciver, President
Borough Council

Approved by the Mayor, this of , 2010

Gerard J. McGlone, Jr. Mayor

Enacted, this day of , 2010

Sandra L. Kelley, Borough Secretary