

NEW SEWICKLEY TOWNSHIP

Commonwealth of Pennsylvania

Ordinance No. 229

AN ORDINANCE OF NEW SEWICKLEY TOWNSHIP, COUNTY OF BEAVER, COMMONWEALTH OF PENNSYLVANIA, ADOPTING INTEREST AND PENALTIES AND FURTHER ADOPTING A SCHEDULE OF ATTORNEY FEES IN CONNECTION WITH THE COLLECTION OF TAXES, TAX CLAIMS, TAX LIENS, MUNICIPAL CLAIMS AND MUNICIPAL LIENS PURSUANT TO ACT 1 OF 1996 AND ACT 20 OF 2003 AND ADOPTING A SCHEDULE OF CHARGES, EXPENSES AND FEES PURSUANT TO THE ACT OF MAY 16, 1923, AS AMENDED, 53 P.S. §7101, §7103, AND §7106, INCLUDING ACT 83 OF 2004, WHICH ORDINANCE REPEALS ANY OTHER ORDINANCES INCONSISTENT HERewith RELATING TO A SCHEDULE OF ATTORNEY FEES PURSUANT TO ACT 1 OF 1996 OR ACT 20 OF 2003

WHEREAS, New Sewickley Township (hereinafter "Municipality") is required from time-to-time to enforce by various means the collection of unpaid taxes, tax claims, tax liens, municipal claims and municipal liens (hereinafter referred to as "Delinquent Claim" or "Delinquent Claims"); and

WHEREAS, the expense of such enforced collection, and of the recordkeeping and other services related to the collection, filing, satisfaction, assignment and revival of Delinquent Claims (hereinafter referred to as "Servicing"), when absorbed by the Municipality constitutes a further demand on the Municipality's resources; and

WHEREAS, Act 1 of 1996 (hereinafter "Act 1") and Act 20 of 2003 (hereinafter "Act 20") amend, inter alia, §3 of the Pennsylvania Municipal Claim and Tax Lien Law (hereinafter the

“Act”), Act of May 16, 1923, PL 207, §3, as amended, 53 P.S. §7106 to permit a municipality, as that term is defined in the Act, to recover reasonable Attorney fees in connection with the collection of Delinquent Claims from the persons and property owing such Delinquent Claims; and

WHEREAS, Act 83 of 2004 amends §1, §2, and §3 of the Act, 53 P.S. §§7101, 7103, and 7106, respectively, and permits the Municipality to recover as part of each unpaid Delinquent Claim, among other things, various Charges, Expenses and Fees, and Attorney Fees relating to the failure to pay the Delinquent Claims promptly and subsequent enforced collection of same; and

WHEREAS, the Municipality desires to exercise all such legal authority in order to encourage timely payment and collection of Delinquent Claims, and to reduce, if not eliminate, the expense associated with Servicing of its Delinquent Claims and enforced collection of same; and

WHEREAS, the Municipality desires to set all interest and penalty rates for the collection of Delinquent Claims at their statutory maximum rates; and

WHEREAS, the Municipality desires to repeal any prior ordinances which are inconsistent herewith.

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED by New Sewickley Township, County of Beaver, Commonwealth of Pennsylvania, as follows:

Article I. Short Title: This Ordinance shall be known as the Tax, Tax Claim, Tax Lien, Municipal Claim and Municipal Lien Attorney Fees and Servicing Charges, Expenses and Fees Ordinance.

Article II. Expenses Approved:

Section 1. **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 bringdown or update of the title search in connection with entry of judgment, issuance of execution, listing for sale, or other action.

Section 2.

Actual Out-of-Pocket Expenses in connection with any enforcement action, such as for postage, non-Sheriff's service of process, investigation of the whereabouts of interested parties and other necessary expenses shall constitute reimbursable expenses as part of each Delinquent Claim recovered.

Article III. Attorney Fees Approved:

Section 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 Municipality, its agents, counsel or assigns in each action initiated pursuant to the Act for the collection of unpaid Delinquent Claims. The property owner'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.

A. **FILING OF MUNICIPAL CLAIM.** The sum of \$150.00 shall constitute reasonable Attorney fees for the preparation and filing of a Municipal Claim as defined under the Act.

B. **PREPARATION AND SERVICE OF WRIT OF SCIRE FACIAS OR COMPLAINT IN ASSUMPSIT AS PROVIDED IN THE ACT.** The sum of \$450.00 shall constitute reasonable Attorney fees for the initiation of

each proceeding and shall include preparation and filing of the Praeipe for Writ of Scire Facias or Complaint in Civil Action, Sheriff's direction for service, Notice pursuant to Pa. R.C.P. §237.1 and the preparation and filing of the Praeipe to Settle and Discontinue the proceeding. The above does not include:

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.

2. Alternative Service of Legal Pleadings. 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:

a. Investigation of Defendant(s) whereabouts and preparation of Affidavit of Diligent Search - \$100.00

b. 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

C. AMICABLE SCIRE FACIAS OR CONSENT JUDGMENT. The sum of \$400.00 shall constitute reasonable attorney fees for the preparation, filing, monitoring and conclusion of an amicable Scire Facias or consent judgment, including negotiation, preparation and filing of the pleading, acceptance of service, installment payment and/or forbearance agreement and satisfaction. See 53 P.S. §7185. Municipality may, in its sole and absolute discretion, hold the amicable Scire Facias or consent judgment and file only in the event of a default in the terms and conditions of the amicable Scire Facias or consent judgment or any related installment or forbearance agreement. If a consent judgment is entered following the filing of Writ of Scire Facias or Complaint in Assumpsit, then the flat fee for entry of the consent judgment shall be the same as that amount provided for in Paragraph D., "ENTRY OF JUDGMENT," below.

D. ENTRY OF JUDGMENT. The sum of \$225.00 shall constitute reasonable Attorney fees in connection with entry of judgment which shall include preparation and filing of the Praeipe to Enter Judgment, Notices of

Judgment, Affidavit of Non-Military Status, and the Praecipe to Satisfy Judgment.

E. WRIT OF EXECUTION - SHERIFF'S SALE OF PROPERTY OR EXECUTION UPON ASSUMPSIT JUDGMENT. 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 Praecipe for Writ of Execution, all Sheriff's documents, preparation and service of Notices of Sheriff's Sale, staying the writ of execution, and attendance at one (1) Sheriff's Sale.

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.

F. 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 Sale and preparation of proposed schedule of distribution of the proceeds realized from such Sale.

G. SALE PURSUANT TO §31.1 OF THE ACT, 53 P.S. §7282. The sum of \$500.00 shall constitute reasonable Attorney fees for a sale of property pursuant to §31.1 of the Act, 53 P.S. §7282, including the preparation of necessary documents, service, court appearances, and the preparation of proposed Sheriff's Schedule of Distribution.

H. INSTALLMENT PAYMENT AGREEMENT. The sum of \$150.00 shall constitute reasonable Attorney fees for the preparation of each written installment payment agreement.

I. 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.

Section 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, which fees shall be awarded to the Municipality, its agents, counsel or assigns as compensation in all contested matters, and in all other matters not specifically referenced in

Article III, Section 1, above, undertaken in connection with the collection of Delinquent Claims:

- A. Senior Attorneys
(practicing law for 10 years or more) \$185.00 per hour
- B. Junior Attorneys
(practicing law for less than 10 years) \$160.00 per hour
- C. Paralegals \$100.00 per hour
- D. Law Clerks \$65.00 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 Municipality's Delinquent Claims. Counsel, whether duly employed or duly appointed by the Municipality, its agents or assigns, shall not deviate from this fee schedule absent a subsequent ordinance 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 3.

The Municipality's legal counsel recovering Attorney fees pursuant to the schedule of Attorney fees in Article III, Sections 1 and 2 of this Ordinance shall be permitted to automatically increase Attorney fees by three percent (3%) on a yearly basis, beginning one (1) year following the date of enactment of this Ordinance.

Article IV. Procedure:

A. **Required Notice:** The Notice required by the Act, as amended, 53 P.S. §7106, shall be provided in accordance therewith and shall be incorporated into an appropriate delinquency notice or notices sent by the Municipality, its agent, counsel or assigns.

B. **Fees to be Accrued and Delinquent Claims to be Filed:** Fees shall accrue for all efforts in collection after the 30th day after the Notice, or after the 10th day of any required Second Notice under the Act, as amended, 53 P.S. §7106, on all accounts referred to counsel for enforcement. Fees accumulated as a result of enforced collection shall be certified by duly appointed counsel for the Municipality authorized to pursue collection of Delinquent Claims pursuant to the Act, or by counsel for the Municipality's agents or assigns and, if not collected in due course with the debt as by voluntary payment, shall be included in any Delinquent Claims filed on behalf of the Municipality or by its agents or assigns in the course of enforcement including any Delinquent Claims originally filed with the Prothonotary of Beaver County, any Delinquent Claims filed with the Sheriff

or in any other Delinquent Claims filed or statements provided where attorney fees are due.

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

Article V. Servicing Charges, Expenses and Fees Approved:

A. Pursuant to §1, §2 and §3 of the Act of May 16, 1923, as amended, 53 P.S. §7101, §7103 and §7106, and specifically in the schedule found in accordance with Act 83 of 2004, the Municipality does hereby authorize the recovery of charges, expenses and fees set forth in Section D below that are incurred by the Municipality or charged to the Municipality by Collectors retained by the Municipality in connection with efforts to collect Delinquent Claims as a result of any persons' failure to promptly pay Delinquent Claims.

B. The following schedule of charges, expenses and fees (hereinafter referred to as "Servicing Expenses," "Out-of-Pocket Expenses," and "Postage Expenses") is hereby approved and adopted by the Municipality pursuant to Act 83 of 2004 which amends §1, §2, and §3 of the Act of May 16, 1923, as amended, 53 P.S. §§7101, 7103 and 7106, which amounts are the direct result of each person's or property's failure to pay Delinquent Claims promptly. The Servicing Expenses, Out-of-Pocket Expenses and Postage Expenses established, assessed, and collected hereunder shall be in addition to the record costs, Article II Expenses and Article III Attorney fees associated with legal proceedings initiated by or on behalf of the Municipality to collect its Delinquent Claims.

C. Servicing of a Delinquent Claim or Delinquent Claims may result in voluntary payment without the initiation of enforcement proceedings. It is the intent of this Article V to pass the cost of Servicing on to the delinquent person or property as part of each Delinquent Claim. The recovery of Servicing Expenses, Out-of-Pocket Expenses and Postage Expenses established herein shall not be contingent upon the initiation of enforcement proceedings. However, such Servicing Expenses, Out-of-Pocket Expenses and Postage Expenses are due even where enforcement proceedings are initiated. The purpose of this section is to pass the entire cost and expense associated with delinquent collection on to the delinquent person or property and to make the Municipality whole on all Delinquent Claims collected.

D. SCHEDULE: The following schedule of Servicing Expenses, Out-of-Pocket Expenses and Postage Expenses shall constitute reasonable and appropriate charges, expenses and fees for each indicated category. The Servicing Expenses, Out-of-Pocket Expenses and Postage Expenses shall be added to and become part of the Municipality's Delinquent Claims, together

with the face, penalties, interest and costs, if any, and title search expense, attorney fees and out-of-pocket expenses in connection with enforcement proceedings, if any, and shall be payable in full before the discharge or satisfaction of any Delinquent Claim. The below schedule of Servicing Expenses, Out-of-Pocket Expenses and Postage Expenses 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 Municipality's Delinquent Claims.

1. Out-of-Pocket Expenses: The expenses of postage, title searches, investigators, process servers and other necessary expenses incurred in Servicing shall constitute reasonable Out-of-Pocket Expenses as part of each Delinquent Claim recovered.

2. Municipal No Lien Letter and Tax Certification: The sum of \$35.00 shall constitute a reasonable Servicing Expense for the preparation and issuance of each Municipal No Lien Letter relating to the Municipality's Delinquent Municipal Claims. The sum of \$15.00 per year certified shall constitute a reasonable Servicing Expense for the preparation and issuance of each Delinquent Tax Claim certification.

3. Postage Expense: Out-of-Pocket Expenses shall include the actual cost of postage related to the collection of the Municipality's Delinquent Claims.

4. Servicing Expense:

a. A Servicing Expense of 10% of Gross Collections shall constitute a reasonable Servicing Expense for all Servicing related to the collection of the Municipality's Delinquent Claims. Servicing Expenses shall accrue on the first of the month for the entire month, or part thereof. There is no per diem Servicing Expense. Gross Collections for the purpose of calculating Servicing Expenses shall include the face together with penalty, interest and lien costs, if any, for each Delinquent Claim collected. Lien costs shall mean charges imposed by the Prothonotary of Beaver County and/or by the Municipality's Collector for the filing, satisfaction, revival, amendment and transfer of Delinquent Claims. Gross Collections shall not include any record costs, attorney fees, or Out-of-Pocket Expenses related to the collection of the Municipality's Delinquent Claims.

b. In addition, the following schedule of Fees shall constitute a reasonable and appropriate Fee for each indicated service:

- i. Assignments \$5.00 per Delinquent Claim;
- ii. Preparing/
Filing Tax Liens \$6.00 per item;
- iii. Satisfactions \$10.00 per Delinquent Claim;
(for no consideration passing receipts)
- iv. Tax Claim Revivals
(i.e. S&A) \$30.00 per Delinquent Claim;
- v. Act 1/Act 20
Compliance \$35.00 per Case;
- vi. Preparing/Filing
Municipal Claims and
Claim Revivals (S&A) \$30.00 per Delinquent
Claim;
- vii. S&As (tax or municipal)
prepared but not filed \$10.00 per S&A;
- viii. Municipal Claim/
Short Title Examination \$45.00 per Delinquent
Claim;
- ix. Sheriff Sale Claim
Certificates \$70.00 per case.

- c. Liability for payment of charges, expenses and fees, including Servicing Expenses, Out-of-Pocket Expenses and Postage Expenses, shall be for those Delinquent Claims identified in Article VI below, regardless of whether the Delinquent Claims are filed as claims in the Prothonotary of Beaver County.

E. The Municipality's delinquent Collector recovering charges, expenses and fees pursuant to the schedule set forth in Article V, Section D of this Ordinance shall be permitted to automatically increase such charges, expenses and fees by three percent (3%) on a yearly basis, beginning one (1) year following the date of enactment of this Ordinance.

Article VI. Effective Date and Retroactivity:

A. This Ordinance shall take effect on the date of enactment set forth below ("Effective Date") and with respect to Attorney fees pursuant to Articles III and IV shall apply to all taxes, tax claims, tax liens, municipal claims, municipal liens, Writs of Scire Facias, Judgments, or Executions filed on or after December 19, 1990, or as otherwise provided by law.

B. Liability for payment of Servicing Expenses, Out-of-Pocket Expenses and Postage Expenses authorized in Articles II and V and listed in Section D. 1-4, above, shall accrue as follows:

1. Immediately upon the Effective Date for all of the Municipality's unpaid Delinquent Tax Claims for calendar years 2022 and prior;
2. January 15th of each year beginning January 15, 2023, for all of the Municipality's Delinquent Tax Claims for calendar years 2022 and thereafter if not paid-in-full on or before January 14th of the year after which the taxes first became payable;
3. Immediately upon the Effective Date for all of the Municipality's Delinquent Municipal Claims due in 2022 and prior years originally billed more than 30 days from the Effective Date.
4. On the 31st day from the initial billing date for all of the Municipality's unpaid Delinquent Municipal Claims for calendar years 2022 and thereafter not paid-in-full within 30 days after the date of the initial billing for the Delinquent Municipal Claims.
5. For Delinquent Tax Claims following tax bills resulting from additional assessments:
 - a. By December 31st of the current year or on the 121st day from the initial billing date, whichever is later, for a current year's additional assessment, billed in the current year;
 - b. On the 121st day from the initial billing date for a prior year's additional assessment, billed in a later year.

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

D. Attorney fees, Servicing Expenses and Out-of-Pocket Expenses incurred in pending enforcement proceedings prior to the Effective Date of this Ordinance, pursuant to a prior ordinance adopted under Act 1 or Act 20, but not collected, shall remain due and owing in accordance therewith, and shall be incorporated in any future statement, Delinquent Claim, pleading, judgment, or execution. Attorney fees, Servicing Expenses and Out-of-Pocket Expenses in any pending or new action incurred after the Effective Date of this Ordinance shall be incurred, charged, and collected in accordance with the schedules and procedures set forth in this Ordinance.

E. The charges, expenses and fees set forth in Article V of this Ordinance relate to all unpaid Delinquent Claims in favor of the Municipality, its agents and assigns, and shall be retroactive to the date of each Delinquent Claim.

Article VII. Assignment: The Municipality assigns the provisions of this Ordinance to any assignee of its Delinquent Claims unless the assignment limits the assignee's ability to collect such amounts. The Municipality 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 Ordinance in actions commenced under the Act and for Servicing any Delinquent Claims retained by the Municipality.

Article VIII. Severability: If any one or more of the provisions or terms of this Ordinance 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 Ordinance to the maximum extent possible and shall in no way affect the validity or enforceability of any other provisions hereof.

Article IX. Interest and Penalties: All interest related to Delinquent Claims shall be charged at the rate of ten percent (10%), pursuant to 53 P.S. §7143. All penalty related to Delinquent Tax Claims shall be charged at the rate of ten percent (10%), pursuant to 72 P.S. §5511.10. All penalty related to Delinquent Municipal Claims shall be charged at the rate of five percent (5%), pursuant to 53 P.S. §7203.

Article X. Repealer: All prior ordinances are hereby repealed in whole or in part to the extent inconsistent herewith.

ORDAINED AND ENACTED THIS 7th day of February, 2023.

ATTEST:

NEW SEWICKLEY TOWNSHIP

Jamie Boyman
Secretary

By: Greg Hays
Chairman