

**ORDINANCE NO. 10-741**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, AMENDING CHAPTER 51, "WATER AND SEWERS", TOWN OF CHINO VALLEY, ARIZONA, CODE OF ORDINANCES, BY ADDING SECTION 51.281 "LIEN ENFORCEMENT FOR UNPAID UTILITY USER FEES"**

WHEREAS, The Town of Chino Valley ("Town") is a utility service provider;

WHEREAS, pursuant to Arizona Revised Statutes Section 9-511.02, the Town is authorized to file a lien on real property for non-payment of utility user fees for the provision of utility services provided to the property if the payment of the fees is delinquent for more than ninety (90) days;

WHEREAS, prior to filing such lien the Town must provide written notice to the owner of the property;

WHEREAS, said written notice shall be given at least thirty (30) days before filing the lien and shall include an opportunity for a hearing with a designated Town Official;

WHEREAS, due to non-payment and/or delinquency of utility user fees, the Mayor and Town Council of the Town have determined that it is in the best interests of the Town to have a mechanism in place to enforce such non-payment and/or delinquencies, in order to provide the level of services necessary to maintain the public health, safety and general welfare, as well as the financial stability of the Town Utility Enterprise Fund;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Common Council of the Town of Chino Valley, Arizona, as Follows:

**Section 1.** Chapter 51 of the Town of Chino Valley, Arizona, Code of Ordinances ("Town Code"), entitled "Water and Sewers" is hereby amended by adding a new Subchapter entitled "Lien Enforcement," Section 51.290, entitled "Lien Enforcement for Unpaid Utility User Fees," as follows:

**§ 51.290 LIEN ENFORCEMENT FOR UNPAID UTILITY USER FEES**

(A) THE TOWN CLERK OR PUBLIC WORKS DIRECTOR MAY ASSESS AND FILE A LIEN ON REAL PROPERTY FOR THE NONPAYMENT OF UTILITY USER FEES FOR SERVICES PROVIDED TO THE PROPERTY IF THE PAYMENT OF THE FEES IS DELINQUENT FOR MORE THAN NINETY (90) DAYS.

(B) BEFORE FILING THE LIEN, THE TOWN CLERK OR PUBLIC WORKS DIRECTOR SHALL PROVIDE WRITTEN NOTICE TO THE OWNER OF THE

PROPERTY. THE NOTICE SHALL BE GIVEN AT LEAST THIRTY (30) DAYS BEFORE FILING THE LIEN AND SHALL INCLUDE AN OPPORTUNITY FOR A HEARING BEFORE AN OFFICIAL, TO BE DESIGNATED BY THE TOWN COUNCIL FOR SUCH PURPOSES. SUBJECT TO SUBSECTION (C), BELOW, THE NOTICE SHALL BE EITHER SERVED PERSONALLY ON OR MAILED TO THE PROPERTY OWNER, AT THE LAST KNOWN ADDRESS BY CERTIFIED, RETURN RECEIPT REQUESTED MAIL, OR TO THE ADDRESS TO WHICH THE TAX BILL FOR THE PROPERTY WAS LAST MAILED AS SHOWN IN THE COUNTY RECORDS.

(C) IF THE OWNER DOES NOT RESIDE ON THE PROPERTY, THE NOTICE SHALL BE SENT TO THE ADDRESS TO WHICH THE TAX BILL FOR THE PROPERTY WAS LAST MAILED AS SHOWN IN THE COUNTY RECORDS.

(D) IF SERVED BY MAIL, NOTICE SHALL BE DEEMED TO BE COMPLETE ON THE DATE ON WHICH THE NOTICE IS DEPOSITED IN THE UNITED STATES MAIL.

(E) THE NOTICE SHALL INFORM THE PROPERTY OWNER THAT (i) HE OR SHE HAS THE OPPORTUNITY FOR A HEARING REGARDING THE DELINQUENCY BEFORE A DESIGNATED TOWN OFFICIAL; (ii) IF A TIMELY OBJECTION IS NOT FILED, THE UNPAID DELINQUENCY SHALL BE DEEMED DUE AND OWING AND FAILURE TO PAY SHALL RESULT IN THE TOWN PURSUING ALL AVAILABLE MEANS OF COLLECTION AS AUTHORIZED BY THE TOWN CODE; (iii) IF A HEARING IS REQUESTED AND IT IS DETERMINED AS RESULT OF THE HEARING THAT THE UNPAID DELINQUENCY IS DUE AND OWING, FAILURE TO PAY SHALL RESULT IN THE TOWN PURSUING ALL AVAILABLE MEANS OF COLLECTION AS AUTHORIZED BY THE TOWN CODE.

(F) IN THE EVENT THE PROPERTY OWNER REQUESTS A HEARING, SUCH REQUEST MUST BE RECEIVED NOT LATER THAN FIFTEEN (15) DAYS FROM THE DATE OF THE NOTICE. THE REQUEST FOR HEARING MUST INCLUDE COPIES OF ALL DOCUMENTS THAT SUPPORT THE OWNER'S POSITION, INCLUDING ANY DOCUMENTS THAT THERE IS NO DELINQUENCY OR THAT THE AMOUNT CLAIMED DELINQUENT BY THE TOWN IS IN ERROR. A HEARING SHALL BE SCHEDULED AND HELD NOT LATER THAN THIRTY (30) DAYS FOLLOWING A REQUEST FOR A HEARING BY A PROPERTY OWNER. THE PROPERTY OWNER SHALL BE NOTIFIED IN WRITING OF THE TIME AND DATE OF THE HEARING.

(G) THE HEARING SHALL BE HELD BY A HEARING OFFICER WHO SHALL BE A NON-TOWN EMPLOYEE RETAINED BY THE TOWN OR A TOWN EMPLOYEE WHO HAS NO INVOLVEMENT WITH THE UTILITIES DIVISION OR THE FINANCE DEPARTMENT. THE HEARING OFFICER SHALL HAVE THE AUTHORITY PRESCRIBED TO PUBLIC OFFICERS PURSUANT TO ARIZONA REVISED STATUTES SECTION 12-2212, AS MAY BE AMENDED FROM TIME TO TIME.

(H) THE HEARING MAY BE CONTINUED ONE TIME BY THE HEARING OFFICER UPON THE WRITTEN REQUEST OF EITHER PARTY FOR GOOD CAUSE.

(I) THE HEARING SHALL BE HELD DURING REGULAR TOWN BUSINESS HOURS.

(J) THE HEARING SHALL BE RECORDED BY AN ELECTRONIC RECORDING DEVICE.

(K) THE PROPERTY OWNER AND THE TOWN SHALL EACH BE GIVEN AN OPPORTUNITY TO PRESENT THEIR RESPECTIVE CASES. THE TOWN SHALL PRESENT ITS CASE FIRST. PRESENTATION BY EITHER PARTY MAY INCLUDE:

- (1) SWORN TESTIMONY;
- (2) SUBMISSION OF EVIDENCE;
- (3) PRESENTATION OF WITNESSES; AND
- (4) CROSS EXAMINATION.

THE ARIZONA RULES OF EVIDENCE SHALL NOT APPLY, AND THE HEARING OFFICER MAY PERMIT ANY EVIDENCE DEEMED RELEVANT TO THE ISSUES AT HAND TO BE ADMITTED.

(L) THE HEARING OFFICER SHALL RENDER A DECISION WITHIN FIFTEEN (15) DAYS OF THE CLOSE OF THE HEARING, WHICH DECISION SHALL BE BINDING AND FINAL ON ALL PARTIES. THE RECORD OF THE HEARING AND THE DECISION BY THE HEARING OFFICER SHALL BE FILED WITH THE TOWN CLERK. THE HEARING OFFICER'S ORDER SHALL BE MAILED TO THE PROPERTY OWNER BY CERTIFIED, RETURN RECEIPT REQUESTED MAIL, AND NOTICE OF SAID ORDER SHALL BE DEEMED TO BE COMPLETE UPON THE DATE ON WHICH THE NOTICE IS DEPOSITED IN THE UNITED STATES MAIL.

(M) THE HEARING OFFICER MAY FIND THE FOLLOWING:

(1) THE PROPERTY OWNER DOES NOT OWE THE DELINQUENT AMOUNT AND THE NOTICE OF DELINQUENCY SHALL BE CANCELED;

(2) THE PROPERTY OWNER DOES OWE THE DELINQUENT AMOUNT AS NOTICED BY THE TOWN AND ORDER THAT THE AMOUNT BE PAID WITHIN TWENTY (20) DAYS OF THE DATE THE DECISION IS RENDERED; OR

(3) A DIFFERENT (LESSER) AMOUNT THAN THAT WHICH WAS NOTICED BY THE TOWN IS OWED AND DELINQUENT AND ORDER THAT AMOUNT BE PAID WITHIN TWENTY (20) DAYS OF THE DATE THE DECISION IS RENDERED.

(N) IN THE EVENT NO HEARING IS REQUESTED BY THE PROPERTY OWNER, OR IN THE EVENT PAYMENT IS NOT MADE ON A DELINQUENT AMOUNT AS DETERMINED BY A HEARING OFFICER AFTER A HEARING, THE

TOWN SHALL PLACE A LIEN ON THE PROPERTY IN ACCORDANCE WITH THIS SECTION.

(O) THE UNPAID UTILITY USER FEES ARE A LIEN ON THE PROPERTY FROM THE DATE OF THE RECORDING OF THE LIEN IN THE OFFICE OF THE COUNTY RECORDER UNTIL ALL FEES ARE PAID IN FULL. THE LIEN IS SUBJECT AND INFERIOR TO THE LIEN FOR GENERAL TAXES AND TO ALL PRIOR RECORDED MORTGAGES AND ENCUMBRANCES OF RECORD. A SALE OF THE PROPERTY TO SATISFY A LIEN OBTAINED UNDER THIS SECTION § 51.281 SHALL BE MADE FOLLOWING A JUDGMENT OF FORECLOSURE AND ORDER OF SALE. THE TOWN MAY BRING AN ACTION TO ENFORCE THE LIEN IN THE YAVAPAI COUNTY SUPERIOR COURT AT ANY TIME AFTER THE RECORDING OF THE LIEN, BUT FAILURE TO ENFORCE THE LIEN BY A FORECLOSURE LAWSUIT SHALL NOT AFFECT THE VALIDITY OF THE LIEN. THE RECORDED UNPAID UTILITY USER FEES LIEN SHALL BE *PRIMA FACIE* EVIDENCE OF THE TRUTH OF ALL MATTERS RECITED IN THE RECORDING AND OF THE REGULARITY OF ALL PROCEEDINGS BEFORE THE RECORDING.

(P) NOTWITHSTANDING ANY OF THE PROVISIONS OF THIS SECTION 51.281, ANY LIEN PLACED ON A PROPERTY PURSUANT TO THIS SECTION SHALL BE ENFORCEABLE PURSUANT TO AND IN ACCORDANCE WITH A.R.S. § 9-511.02.

**Section 2.** All other Chapters and Sections of the Town of Chino Valley, Arizona, Code of Ordinances, not herein amended, shall remain in full force and effect.

**Section 3.** If any provision in this Ordinance is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Chino Valley, Arizona, this 28<sup>th</sup> day of October, 2010.

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Jim Bunker, Mayor

ATTEST:

APPROVED AS TO FORM:

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Jami C. Lewis, Town Clerk

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Musgrove Drutz & Kack, P.C.  
Town Attorney