



Legislation Details (With Text)

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**Type:** Ordinance      **Status:** Passed Finally

**File created:** 9/8/2009      **In control:** Committee on Finance and Law

**On agenda:**      **Final action:** 10/20/2009

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**Effective date:** 10/23/2009

**Title:** Ordinance approving and adopting a schedule of attorney fees in connection with the collection of filed and unfiled taxes, tax claims, tax liens, municipal claims and municipal liens, pursuant to Act 1 of 1996 and Act 20 of 2003 and approving 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, and Act 83 of 2004.

**Sponsors:**

**Indexes:** MISCELLANEOUS

**Code sections:**

**Attachments:** 1. 2009-1740.doc

| Date       | Ver. | Action By                    | Action                            | Result |
|------------|------|------------------------------|-----------------------------------|--------|
| 10/26/2009 | 1    | Mayor                        | Signed by the Mayor               |        |
| 10/20/2009 | 1    | City Council                 | Passed Finally                    | Pass   |
| 10/14/2009 | 1    | Committee on Finance and Law | AFFIRMATIVELY RECOMMENDED         | Pass   |
| 10/7/2009  | 1    | Committee on Hearings        | Public Hearing Held               |        |
| 9/22/2009  | 1    | Committee on Finance and Law | Held for Cablecast Public Hearing | Pass   |
| 9/22/2009  | 1    | Committee on Finance and Law | Held for Cablecast Post Agenda    | Pass   |
| 9/15/2009  | 1    | City Council                 | Read and referred                 |        |

Presented by Mr. Peduto

Ordinance approving and adopting a schedule of attorney fees in connection with the collection of filed and unfiled taxes, tax claims, tax liens, municipal claims and municipal liens, pursuant to Act 1 of 1996 and Act 20 of 2003 and approving 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, and Act 83 of 2004.

**WHEREAS**, the City of Pittsburgh (hereinafter "City") 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, whether filed or unfiled (hereinafter individually referred to as "Delinquent Claim" or collectively referred to as "Delinquent Claims"; Delinquent Claims relating solely to taxes shall be referred to as "Delinquent Tax Claims"; Delinquent Claims relating solely to Municipal Claims, Municipal Service Fees or Municipal Assessments shall be referred to as "Delinquent Municipal 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 City, constitutes a further demand on the City's resources; and

**WHEREAS**, Act 1 of 1996 (hereinafter "Act 1") and Act 20 of 2003 (hereinafter "Act 20") amend, among other provisions, §3 of the Pennsylvania Municipal Claim and Tax Lien Law (hereinafter the "Act"), Act of May 16, 1923, PL 207, so that §3, as amended, 53 P.S. §7106, permits the City 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 City to recover as part of each unpaid Delinquent Claim, among other things, the Charges, Expenses and Fees relating to the failure to pay the Delinquent Claim promptly; and

**WHEREAS**, the City desires to exercise all such legal authority granted to it under the Act 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 with the enforced collection of the same;

**Be it resolved that the Council of the City of Pittsburgh hereby enacts as follows:**

**Section 1. Short Title:** This Ordinance shall be known as the Delinquent Claim, Attorney Fees and Servicing Charges, Expenses and Fees Ordinance.

**Section 2. Expenses Approved:**

A. 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 Rule 3129 of the Pennsylvania Rules of Civil Procedure ("Pa. R.C.P."). 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.

B. OUT-OF-POCKET EXPENSES.

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.

**Section 3. Attorney Fees Approved:**

A. 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 City, 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.

(1) PREPARATION AND FILING OF MUNICIPAL CLAIMS. The sum of \$150.00 shall constitute reasonable attorney fees for the preparation and filing of a municipal claim as defined under the Act.

(2) 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 Praeceptum 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 Praeceptum to Settle and Discontinue the proceeding. The above does not include:

(a) 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.

(b) 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:

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

ii. 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

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. The City 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 4. "ENTRY OF JUDGMENT," below.

(4) 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 Praeceptum to Enter Judgment, Notices of Judgment, Affidavit of Non-Military Status, and the Praeceptum to Satisfy Judgment.

(5) 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 Praeceptum for Writ of Execution, all Sheriff's documents, preparation and service of Notices of Sheriff's Sale, garnishments, personal property sales, staying the writ of execution, and attendance at one (1) Sheriff's Sale.

(a) Postponements. The sum of \$100.00 shall constitute reasonable attorney fees for each continuance of Sheriff's Sale at the request of the defendant.

(6) 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.

(7) 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.

(8) INSTALLMENT PAYMENT AGREEMENT. The sum of \$150.00 shall constitute reasonable attorney fees for the preparation of each written installment payment agreement.

(9) 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 or other execution.

## B. 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 City, 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:

- (1) Senior Attorneys (practicing law for 10 years or more) \$ 185.00 per hour
- (2) Junior Attorneys (practicing law for less than 10 years) \$ 160.00 per hour
- (3) Paralegals \$ 100.00 per hour
- (4) 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 City's Delinquent Claims. Counsel, whether duly employed or duly appointed by the City, its agents or assigns, shall not deviate from this fee schedule absent a subsequent amendment of 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 4. 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 City 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 City authorized to pursue collection of Delinquent Claims pursuant to the Act, or by counsel for the City'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 City or by its agents or assigns in the course of enforcement including any Delinquent Claims originally filed with the Prothonotary or Department of Court Records, any Delinquent Claims filed with the Sheriff or in any other Delinquent Claims filed or unfiled or in 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.

**Section 5. 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

City does hereby authorize the recovery of charges, expenses and fees set forth in Section D below that are incurred by the City or charged to the City by Collectors retained by the City 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 City 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, Section 3 Attorney fees and Section 2 Expenses associated with legal proceedings initiated by or on behalf of the City 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 Section 5 to pass the cost of Servicing on to the delinquent person or property as part of each Delinquent Claim. The recovery of charges, expenses and fees established herein shall not be contingent upon the initiation of enforcement proceedings. However, such charges, expenses and fees 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 City whole on all Delinquent Claims collected.
- D. **Schedule:** The following schedule of charges, expenses and fees shall constitute reasonable and appropriate charges, expenses and fees for each indicated category. The charges, expenses and fees shall be added to and become part of the City'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 charges, expenses and fees is separate and distinct from any amounts imposed by the Sheriff, Department of Court Records, Court or any other public office in connection with the collection of the City's Delinquent Claims.
- (1) **Out-of-Pocket Expenses:** Actual Out-of-Pocket Expenses in connection with Servicing, including, but not limited to, the expense of 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 \$25.00 shall constitute a reasonable Servicing Expense for the preparation and issuance of each Municipal No Lien Letter relating to the City's Delinquent Municipal Claims. The sum of \$10.00 per year certified shall constitute a reasonable Servicing Expense for the preparation and issuance of each Delinquent Tax Claim certification.
- (3) **Postage Expense:** This Out-of-Pocket Expense shall include the actual cost of

postage related to the collection of the City'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 City's Delinquent Tax Claims. A Servicing Expense of 15% of Gross Collections shall constitute a reasonable Servicing Expense for all Services related to the collection of the City's Delinquent Municipal 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 Department of Court Records and/or by the City'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 City's Delinquent Claims. 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 Section 6, A, below, regardless of whether the Delinquent Claims are filed as claims in the Allegheny County Department of Court Records Office.

**Section 6. Liability for Payment of Attorney Fees, Out-of-Pocket Expenses, Postage Expenses, Servicing Expenses Effective Date and Retroactivity:**

- A. This Ordinance shall take effect on the date indicated below ("Effective Date") and with respect to attorney fees and out-of-pocket expenses pursuant to Sections 2, 3, and 4 shall apply to all Delinquent Claims, 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 Section 2 and 5 and listed in Section 5, paragraph D, items (1) through (4), above, shall accrue as follows:
- (1) Immediately on the Effective Date for all of the City's unpaid Delinquent Tax Claims for calendar years 2008 and prior;
  - (2) January 15th of each year beginning January 15, 2010, for all of the City's taxes for calendar year 2009 and thereafter if not paid-in-full on or before January 14<sup>th</sup> of the year after which the taxes first became payable;
  - (3) Immediately upon the Effective Date for all of the City's Delinquent Municipal Claims due in 2009 and prior years originally billed more than 90 days from the Effective Date.
  - (4) On the 91<sup>st</sup> day from the initial billing date for all of the City's unpaid Delinquent Municipal Claims for calendar years 2009 and thereafter not paid-in-full within 90 days after the date of the initial billing for the Delinquent Municipal Claims.

- (5) For tax bills resulting from additional assessment:
- (a) By December 31<sup>st</sup> of the current year or on the 121<sup>st</sup> day from the initial billing date, whichever is later, for a current year's additional assessment, billed in the current year;
  - (b) On the 121<sup>st</sup> day from the initial billing date for a prior year's additional assessment, billed in a later year.
- C. In no event shall the City's right to charge and collect reasonable attorney fees pursuant to Sections 3 and 4 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 or 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 Section 5 of this Ordinance relate to all unpaid Delinquent Claims in favor of the City its agents and assigns, and shall be retroactive to the date of each Delinquent Claim.

**Section 7. Assignment:** The City may assign the provisions of this Ordinance to any assignee of its Delinquent Claims unless the assignment or any applicable law limits the assignee's ability to collect such amounts. The City 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 City.

**Section 8. 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.

**Section 9. Repealer:** All prior Resolutions and Ordinances are hereby repealed in whole or in part to the extent inconsistent herewith.

