

City of Hesperia
STAFF REPORT



DATE: June 21, 2022

TO: Mayor and Council Members
Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, City Manager

BY: Casey Brooksher, Director of Administrative Services
Heather Beardsley, Administrative Analyst

SUBJECT: Amendments to Title 14 of Hesperia Municipal Code related to billing and collection procedures for water service

RECOMMENDED ACTION

It is recommended that the City Council and Board of Directors of the Hesperia Water District introduce and place on first reading Ordinance No. 2022-07 amending Title 14 of the Hesperia Municipal Code related to billing and collection procedures for water service.

BACKGROUND

Section 14.02.080 of the Hesperia Municipal Code (HMC) establishes the guidelines and procedures for billing and collection methods. Section 14.02.080(O) establishes the procedure for the placement of liens on real properties for delinquent fees, fines, and charges accrued for delinquent water services. In addition to establishing liens on properties, unpaid liens are pursuant to subsequent collection via the San Bernardino County property tax rolls.

Hesperia Municipal Code (HMC) Section 14.02.080(O) authorizes the use of the special assessment to collect on liens placed on properties which remain unpaid by the end of the fiscal year. Property liens are only assessed after the property owner, or responsible person, has failed to pay their water bill by its due date and failed to comply with a Past Due Notice.

On July 5th, 2011, the City Council approved Ordinance 2011-06 adopting new policies and procedures for the Hesperia Water District. Ordinance 2011-06 outlined an administrative fee schedule for the Hesperia Water District and specified procedures to collect unpaid fines or fees as a result of water service provided by the District.

ISSUES/ANALYSIS

Currently, Section 14.02.080 of the Hesperia Municipal Code requires the District to notify the parties liable for payment of the delinquent charges, the intent to establish a lien against all real property in San Bernardino County and/or in any other county in the state of California by mail. If the charges remain unpaid for ten days or more after the notice has been deposited in the mail, the general manager shall prepare a certificate of charges to present to the Board before the recordation of the lien.

However, Section 1.12.370 of the Hesperia Municipal Code, also related to establishing liens, does not require the City to present to the Board prior to recordation of a property lien. The amendment to Title 14, Chapter 14.02.080 will modify the procedure of establishing liens to be

similar to the procedure found in Chapter 1.12, Section 1.12.370 by removing the step of presenting each lien to the Board before recordation. A public hearing and Board approval are not required for the District to record a lien for delinquent water charges. This change will allow the procedure of the recordation of liens to be simplified and better serve the District as an alternative to disconnections for non-payment.

FISCAL IMPACT

There is no fiscal impact associated with this item.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Ordinance 2022-07
2. Exhibit "A" – Chapter 14.02.080 – Amended Track Changes Copy
3. Exhibit "B" – Chapter 14.02.080 – Amended Clean Copy

ORDINANCE NO. 2022-07

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HESPERIA, CALIFORNIA AND THE BOARD OF DIRECTORS OF
THE HESPERIA WATER DISTRICT, AMENDING TITLE 14 OF THE
HESPERIA MUNICIPAL CODE RELATED TO BILLING AND
COLLECTION PROCEDURES FOR THE HESPERIA WATER
DISTRICT**

WHEREAS, in 1990, the Hesperia Water District ("District") was established as a subsidiary district of the City of Hesperia ("City"); and

WHEREAS, the District is charged with the control of the water system of the City for the purpose of obtaining, conserving and disposing of water for public and private uses; and

WHEREAS, Title 14, Chapter 14.02, of the Hesperia Municipal Code regulates the City's water and wastewater systems, and all things necessary or incidental to such systems, including but not limited to, the authority to set fees for service, billing procedures, and disconnection steps for nonpayment; and

WHEREAS, the Water District proposes to amend Section 14.02.080 of the Hesperia Water Code to update the procedures for collection of unpaid delinquent fees from responsible parties.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HESPERIA DOES ORDAIN AS FOLLOWS:

Section 1. All of the facts set forth in this Ordinance are true, correct and are adopted as findings.

Section 2. Title 14, Section 14.02.080 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "A", attached hereto.

Section 3. Title 14, Section 14.02.080 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "B", attached hereto.

Section 4. This Ordinance shall take effect thirty on July 1, 2022.

Section 5. The City Clerk shall certify to the adoption of the Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution No. 2007-101.

ADOPTED AND APPROVED this 21st day of June 2022.

Brigit Bennington, Mayor

ATTEST:

Erin Baum, Assistant City Clerk

14.02.080 Billing and collection procedures.

- A. **Billing Period.** The billing period shall be at the option of the district.
- B. **Meter Reading.** Meters shall be read as nearly as possible on the same date of each corresponding month by one of the following methods:
 - 1. **Actual - Consumption of water based upon a meter read.**
 - 2. **Estimated - Consumption may be estimated when the meter is found to be non-registering, damaged, inaccessible, stolen, or when an actual read is unavailable. Such estimates shall be made from previous consumption for a comparable period or by such other method as may be determined by the district, said decision of the district is to be final.**
- C. **Opening and Closing Bills.** Opening and closing bills for less than the normal billing period shall be prorated as to minimum charges.
- D. **Deposits.**
 - 1. **New Customer.** If an applicant does not have a previous minimum one year record of having at all times paid his water/sewer bills or other fees when due to the district, during a period ending within the preceding eighteen (18) months of the date of application for service, then the district shall require said applicant to make a deposit as a condition of rendering water service. Such deposit shall be as determined by policy or other action established by the district.
 - 2. **Return of Deposit.** A guarantee deposit with the water district made by an applicant whose account has not been in arrears or any violations at any time during twelve (12) consecutive months, after which said deposit shall be applied as an offset without interest or upon termination of service.
 - 3. **Use of Deposit.** Subsequent to termination of service, the amount remaining unpaid for water/sewer service or any applicable fees may be retained by the district as an offset from the deposit.
 - 4. **Disconnected for Non-Payment.** District policy requires a guarantee deposit if a customer has been disconnected for non-payment and does not have a guarantee deposit at the time of disconnection. In addition, a customer with a deposit that is insufficient to cover the amount of a delinquent bill shall be charged an additional deposit sufficient to cover the difference for security. These required deposits shall be paid in full, along with all other necessary fees, before the service shall be reconnected. Said guarantee deposit will be not less than the minimum deposit as established by the district.
- E. **Billing Charges.**
 - 1. **Service Charge.** There shall be a fixed service charge for water service connections, construction meters, and private fire protection service to cover the district's expense to monitor and maintain the use of said meter. This charge shall be subject to change by action of the board as deemed necessary.
 - 2. **Sewer Charge.** There shall be a fixed sewer charge for all service connections to the sewer system to cover the district's expense. This charge shall be subject to change by action of the board as deemed necessary.
 - 3. **Consumption Charge.** There shall be a charge for actual or estimated water usage; this charge is subject to change by action of the board as deemed necessary.
 - 4. **Other fees.** Other fees may be applicable as set forth in the fee schedule.
- F. **Payment.** Water and sewer service bills shall be due and payable in accordance with the policy adopted by city council resolution.
- G. **Termination of Service.**

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1. Customer Request. Customers desiring to terminate service should notify the district at least two business days prior to vacating the premises. Unless termination of service is requested, the customer shall be liable for charges whether or not any water is used.
 2. Termination of Service Due to Non-Payment. Service shall be terminated for non-payment of bills in accordance with the policy established and adopted by resolution of the city council. Any amount due shall be deemed a debt to the district until paid in full.
- H. Delinquencies. Accounts not paid on or before the due date on the bill will be subject to such fees as identified in the city's adopted fee schedule.
1. Disconnected for non-payment. A meter disconnected for non-payment of bills shall not be reconnected, unlocked or turned on until all unpaid bills, applicable fees, and deposits have been paid to the district.
- I. Responsibility. Failure to receive a bill, phone call, door tag, or any other attempt of contact by the district does not relieve a customer of liability. Any amount due shall be deemed a debt to the district, and any person, firm or corporation failing, neglecting or refusing to pay said indebtedness shall be liable to an action in the name of the district in any court of competent jurisdiction for the amount thereof.
- J. Water Used without Application. A person using water from a service connection without having made prior application to the district for water/sewer service shall be held liable for the service charges, consumption charges, and all other fees for water delivered from the date of the last recorded meter reading, and if the meter is found inoperative, the district will estimate the quantity consumed. Until proper application for water service is made and any accumulated bills for service are paid, the service shall be disconnected by the district without notice.
- K. Non-Compliance. The district may, unless otherwise provided, disconnect water/sewer service to a customer for non-compliance with this chapter or any other resolution, ordinance, or regulation related to water/sewer service if the customer fails to comply with them within ten days from written notice from the district informing of the intention to disconnect service. If such non-compliance affects emergency matters of health and safety, and conditions warrant, the district may disconnect water/sewer service immediately, with or without prior notice.
- L. Service Refused or Disconnected. Service may be refused or disconnected without prior notice for the following reasons:
1. Where apparatus or appliances are in use which might endanger or disturb the service to other customers;
 2. Where there exists a cross connection in violation of state or federal laws;
 3. For non-compliance with this chapter or any other resolution, ordinance or regulation relating to the water/sewer service;
 4. To protect the district against fraud or abuse.
- M. Turn On/Turn Off. No charge shall be made for a turn-on or turn-off of water/sewer service at the meter, either for emergency purposes, or at the request of the current customer. The district shall, upon request day or night, without charge, shut off the supply of water for emergency purposes at the curb stop. If a customer makes multiple requests to turn-on water when having previously been attempted but water was found to be flowing, the district shall require payment of all costs reasonably borne.
- N. Liability/Inspection of Premises. The district does not assume liability for inspecting any apparatus on the premises of the customer. However, the district does reserve the right of inspection if there is reason to believe that unsafe apparatus is being used.

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- O. Delinquencies; Collection from Customer and Property Owner. The customer and property owner shall be jointly and severally liable for all charges that may be imposed under this chapter, including but not limited to charges for tampering as described in Section 14.02.060, and all charges for water service, sewer service and water usage as described in Sections 14.02.070 and 080, including any delinquent charges.
1. Authority and Effect. The district may secure the payment of delinquent charges for water services by establishing a lien against all property located within the state of California which is owned by the person who is liable for the payment of such charges.
 2. Delinquency Defined. Water/sewer bills shall be deemed delinquent on the date the bill is issued. Delinquent charges for water/sewer services are imposed on those accounts which remain unpaid after twenty (20) days from the bill date.
 3. Notice to Lienee. Prior to establishing any lien pursuant to this section, the general manager shall notify the person who is liable for the payment of the delinquent charges that the delinquency exists and that the district may establish a lien against all real property in San Bernardino County and/or in any other county in the state of California, which such person currently owns or which such person might afterwards acquire during the effective period of the lien. Such notice shall be in writing and shall be served upon the prospective lienee by deposit in the United States Mail.
 4. Procedure. In all cases where charges for water services remain unpaid for ten days or more after the notice specified in subsection 3 of this section has been deposited in the mail, the general manager, ~~or such other person who may be directed to do so by the board,~~ shall prepare a certificate of charges due ~~for presentation to the board and shall inform the board, before the recordation of a lien pursuant to subsection 5 of this section, of the lien based upon said certificate of charges due,~~ stating the amount ~~thereof of the lien,~~ the name and address of the licensee, and the location of the real property associated with the delinquency ~~and shall obtain the approval of the board to so record.~~ Thereafter, the general manager shall file for record the certificate of charges due in the office of the county recorder of the county of San Bernardino and in the office of the county recorder of any other county in the state of California in which there is reason to believe that there is real property owned by the person who is liable for the payment of the delinquent charges.
 5. Contents of Certificate. Each certificate filed pursuant to subsection 4 of this section shall be executed under penalty of perjury and shall certify the amount of unpaid charges including any penalty, the name and address of the person who is liable therefor and the fact that the district is entitled to payment thereof.
 6. Release of Lien. Liens recorded pursuant to subsection 4 of this section shall be released upon full satisfaction thereof.
 7. Collection on Tax Roll. In addition to establishing a lien pursuant to subsections 1 through 6 of this section, delinquent and unpaid charges for services may be collected on the tax roll pursuant to the procedures set forth herein, or any other applicable procedures under state law. A statement of those delinquent and unpaid charges for water and other services that remain delinquent and unpaid for sixty (60) days or more on July 1st, or on such other date as determined by the district, shall be furnished to the county in accordance with applicable county requirements. The amount of any such delinquent and unpaid charges shall be added to and become a part of the annual taxes next levied upon the property upon which the water or other services for which the charges are unpaid was used and upon the property subject to the charges for any other district services, and shall constitute a lien on that property as of the same time and in the same manner as does the tax lien securing such annual taxes. All laws applicable to the levy, collection and enforcement of municipal ad valorem taxes shall be applicable to such charges, except that if any real property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of such

taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the delinquent and unpaid charges relating to such property shall be transferred to the unsecured roll for collection.

(Ord. No. 2011-06, § 4(Exh. A), 7-19-11; Ord. No. 2020-02 , §§ 2—5, 1-21-20)

14.02.080 Billing and collection procedures.

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 - 2. Return of Deposit. A guarantee deposit with the water district made by an applicant whose account has not been in arrears or any violations at any time during twelve (12) consecutive months, after which said deposit shall be applied as an offset without interest or upon termination of service.
 - 3. Use of Deposit. Subsequent to termination of service, the amount remaining unpaid for water/sewer service or any applicable fees may be retained by the district as an offset from the deposit.
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- K. Non-Compliance. The district may, unless otherwise provided, disconnect water/sewer service to a customer for non-compliance with this chapter or any other resolution, ordinance, or regulation related to water/sewer service if the customer fails to comply with them within ten days from written notice from the district informing of the intention to disconnect service. If such non-compliance affects emergency matters of health and safety, and conditions warrant, the district may disconnect water/sewer service immediately, with or without prior notice.
- L. Service Refused or Disconnected. Service may be refused or disconnected without prior notice for the following reasons:
 1. Where apparatus or appliances are in use which might endanger or disturb the service to other customers;
 2. Where there exists a cross connection in violation of state or federal laws;
 3. For non-compliance with this chapter or any other resolution, ordinance or regulation relating to the water/sewer service;
 4. To protect the district against fraud or abuse.
- M. Turn On/Turn Off. No charge shall be made for a turn-on or turn-off of water/sewer service at the meter, either for emergency purposes, or at the request of the current customer. The district shall, upon request day or night, without charge, shut off the supply of water for emergency purposes at the curb stop. If a customer makes multiple requests to turn-on water when having previously been attempted but water was found to be flowing, the district shall require payment of all costs reasonably borne.

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 3. Notice to Lientee. Prior to establishing any lien pursuant to this section, the general manager shall notify the person who is liable for the payment of the delinquent charges that the delinquency exists and that the district may establish a lien against all real property in San Bernardino County and/or in any other county in the state of California, which such person currently owns or which such person might afterwards acquire during the effective period of the lien. Such notice shall be in writing and shall be served upon the prospective lientee by deposit in the United States Mail.
 4. Procedure. In all cases where charges for water services remain unpaid for ten days or more after the notice specified in subsection 3 of this section has been deposited in the mail, the general manager shall prepare a certificate of charges due stating the amount of the lien, the name and address of the licensee, and the location of the real property associated with the delinquency. Thereafter, the general manager shall file for record the certificate of charges due in the office of the county recorder of the county of San Bernardino and in the office of the county recorder of any other county in the state of California in which there is reason to believe that there is real property owned by the person who is liable for the payment of the delinquent charges.
 5. Contents of Certificate. Each certificate filed pursuant to subsection 4 of this section shall be executed under penalty of perjury and shall certify the amount of unpaid charges including any penalty, the name and address of the person who is liable therefor and the fact that the district is entitled to payment thereof.
 6. Release of Lien. Liens recorded pursuant to subsection 4 of this section shall be released upon full satisfaction thereof.
 7. Collection on Tax Roll. In addition to establishing a lien pursuant to subsections 1 through 6 of this section, delinquent and unpaid charges for services may be collected on the tax roll pursuant to the procedures set forth herein, or any other applicable procedures under state law. A statement of those delinquent and unpaid charges for water and other services that remain delinquent and unpaid for sixty (60) days or more on July 1st, or on such other date as determined by the district, shall be furnished to the county in accordance with applicable county requirements. The amount of any such delinquent and unpaid charges shall be added to and become a part of the annual taxes next levied upon the property upon which the water or other services for which the charges are unpaid was used and upon the property subject to the charges for any other district services, and shall constitute a lien on that property as of the same time and in the same manner as does the tax lien securing such annual taxes. All laws applicable to the levy, collection and enforcement of municipal ad valorem taxes shall be applicable to such charges, except that if any real property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for

value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the delinquent and unpaid charges relating to such property shall be transferred to the unsecured roll for collection.

(Ord. No. 2011-06, § 4(Exh. A), 7-19-11; Ord. No. 2020-02 , §§ 2—5, 1-21-20)

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