

**BOROUGH OF AVALON**

**Commonwealth of Pennsylvania**

**Ordinance No. 1308**

**AN ORDINANCE OF THE BOROUGH OF AVALON, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, AMENDING ORDINANCE NUMBER 1286 SO AS TO AUTHORIZE JORDAN TAX SERVICE, INC., TO ASSESS A 10% PENALTY ON THE ENTIRE BILL FOR PASSED DUE SEWAGE, INCLUDING THE SURCHARGE.**

**WHEREAS**, the Borough of Avalon (hereinafter, "Municipality" or "Borough") is required from time-to-time to enforce, by various means, the collection of unpaid taxes, tax claims, tax liens, municipal claims (including but not limited to passed due sewage and surcharge fees) and municipal liens (hereinafter, "claim" or "claims"); and

**WHEREAS**, the expenses of such enforced collection, as well as the recordkeeping and other services related to the collection, filing, satisfaction, assignment, and revival of claims (hereinafter, "servicing"), when absorbed by the Municipality, constitutes a further demand on the Borough's resources; and

**WHEREAS**, Act 1 of 1996 (hereinafter, "Act 1") and Act 20 of 2003 (hereinafter, "Act 20") as amended, including the Pennsylvania Municipal Claim and Tax Lien Act (hereinafter, the "Act"), as enacted on May 16, 1923, as PL 207, as amended, 53 P.S. § 7106, which permits a "municipality," as that term is defined in the Act, to recover reasonable attorney fees in connection with the collection of claims from the persons or property owing such claims; and

**WHEREAS**, 53 P.S. §§ 7101, 7103, and 7106, respectively, at minimum permit a municipality to recover as part of each unpaid claim various charges, penalties,

expenses/fees, and attorney fees relating to the failure to pay the claims promptly, as well as the charges, penalties, expenses/fees, and attorney fees incurred during the collection of same; and

**WHEREAS**, the Borough desires to exercise all legal authority necessary for encouraging the timely payment and collection of claims and to reduce, if not eliminate, the expenses associated with servicing of its claims and the enforced collection of same; and

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

**NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED** by the Borough of Avalon, County of Allegheny, Commonwealth of Pennsylvania, as follows:

**Article I.**     **Short Title:**

This Ordinance shall be known as the "Amended Ordinance Number 1286 Authorizing Jordan Tax Service, Inc., To Assess a 10% Penalty On The Entire Bill for Passed Due Sewage, Including the Surcharge."

**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 the entry of Judgment, issuance of Execution, listing for sale, or other action.

Section 2.     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 claim recovered.

**Section 3. AUTHORIZATION TO JORDAN TAX SERVICE, INC.**

Through this Ordinance, Jordan Tax Service, Inc., (hereinafter, "Jordan Tax Service") is herein authorized, as an agent of the Municipality authorized to collect passed due sewage fees, to assess a flat 10% penalty on the entire bill due, including both the sewage and the surcharge applied to the overdue amount.

**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 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 OR MUNICIPAL CLAIM. The sum of \$150.00 shall constitute reasonable attorney fees for the preparation and filing of municipal claims, 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 the preparation and filing of the Praeceptum for Writ of Scire Facias or Complaint in Civil Action, Sheriff's direction for service, the Notice pursuant to Pa. R.C.P. § 237.1, and the preparation and filing of the Praeceptum to Settle

and Discontinue the proceeding, as well as obtaining any Satisfaction Certificate. The above does not include the following:

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:

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

b. Preparation and Presentation of a Motion for Alternative Service, and the delivery of the Order of Court, along with appropriate directions to the Sheriff for service - \$200.00

C. ENTRY OF JUDGMENT. The sum of \$225.00 shall constitute reasonable attorney fees in connection with Entry of Judgment; this includes the preparation and filing of the Praecipe to Enter Judgment, Notices of Judgment, Affidavit of Non-Military Status, and the Praecipe to Satisfy Judgment.

D. WRIT OF EXECUTION - SHERIFF'S SALE OF PROPERTY OR EXECUTION UPON ASSUMPSIT JUDGMENT. The sum of \$700.00 shall constitute reasonable attorney fees for the preparation of all documents necessary for each Execution upon any Judgment entered pursuant to the Act. This sum includes the preparation and filing of the

Praecipe for Writ of Execution, all Sheriff's documents, the preparation and service of Notices of Sheriff's Sale, staying the Writ of Execution, and the attendance at one (1) Sheriff's Sale.

1. Postponements. The sum of \$100.00 shall constitute reasonable attorney fees for each continuance of the Sheriff's Sale at the request of the Defendant.

E. 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; this includes the preparation and service of necessary documents, court appearances, the attendance at the sale, and the preparation of a proposed schedule of distribution of the proceeds realized from such sale.

F. 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; this includes the preparation of necessary documents, service, court appearances, and the preparation of the proposed Sheriff's Schedule of Distribution.

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

H. MOTIONS. The sum of \$200.00 shall constitute reasonable attorney fees for the preparation, filing, and presentation of motions. These motions include but are not limited to Motions to Reassess Damages, Motions to Amend the Caption, and Motions to Continue the Sheriff's Sale. Motions for Alternative Service are **excluded** from this paragraph.

## 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, as undertaken in connection with the collection of 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

These hourly fees are recorded in increments of 1/10th of an hour for all time devoted to the enforcement and collection of the Municipality's 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.

**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 agents, counsel, or assigns.

B. Fees to be Accrued and Claims to be Filed: Fees shall accrue for all efforts in collection after the 30<sup>th</sup> day after the Notice, or after the 10<sup>th</sup> 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, where counsel is authorized to pursue the collection of claims pursuant to the Act or by counsel for the Municipality's agents or assigns. If not collected in due course with the debt as by voluntary payment, fees shall be included in any claims filed on behalf of the Municipality or by its agents or assigns in the course of the enforcement. This includes any claims originally filed with the Prothonotary, any claims filed with the Sheriff, or with any other 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 claim or claims in each proceeding as provided by the Act and as provided herein.

**ARTICLE V. Servicing Charges, Expenses and Fees Approved:**

A. The following schedule of charges, expenses, and fees (hereinafter collectively referred to as "servicing fees") is hereby approved and adopted by the Municipality pursuant to 53 P.S. §§ 7101, 7103 and 7106, which amounts are the direct result of each person's failure to pay claims promptly. The servicing fees established, assessed, and collected hereunder shall be **in addition** to the record costs, whether they are the expenses set forth in Article II or the attorney fees of Article III.

B. The servicing of a claim or claims may result in voluntary payment without the initiation of enforcement proceedings. The intent of Article V is to pass the cost of servicing the delinquency on to the delinquent person or property. However, the recovery of servicing fees shall **not** be contingent upon the initiation of enforcement proceedings. Nevertheless, servicing fees are recoverable where enforcement proceedings are initiated. The purpose of this section is to pass the cost and expense associated with delinquent collection on to the person or property and to make the Municipality whole on all claims collected.

C. Schedule: The following schedule of fees shall constitute reasonable and appropriate servicing fees for each indicated service. The servicing fees shall be added to and become part of the Municipality's claims, together with the face, penalties (including but not limited to the 10% surcharge referenced in section 3 of Article II of this Ordinance), interest, costs, and attorney fees and shall be payable in full before the discharge or satisfaction of any claim. The schedule of fees is **separate and distinct** from any amounts imposed by the Sheriff, the Prothonotary, the Court, or any other public office in connection with the collection of the Municipality's claims:

- |    |                                     |                    |
|----|-------------------------------------|--------------------|
| 1. | Assignments                         | \$ 5.00 per claim; |
| 2. | Filing Tax Liens                    | \$ 5.00 per item;  |
| 3. | Satisfactions                       | \$ 5.00 per claim; |
| 4. | Tax Claim Revivals<br>(i.e., S & A) | \$10.00 per claim; |

5. Act1/Act 20 Compliance \$35.00 per case;
6. Filing Municipal Claim and  
Filing Municipal Claim  
Revivals \$15.00 per claim;
7. Municipal Claim/  
Short Title Examination \$35.00 per claim;
8. Sheriff Sale Claim  
Certificates \$50.00 per case;
9. Claim Certifications \$10.00 per year;
10. Servicing, which includes  
staffing, computers,  
office space, telephones,  
equipment, and materials:  
For **all** delinquent and  
liened taxes, tax liens,  
municipal claims (filed or  
unfiled) and municipal  
liens collections 10% of Gross;
11. Postage and Court costs Actual cost

**ARTICLE VI. Effective Date and Retroactivity:**

A. This Ordinance shall take effect on the date of enactment set forth below 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. 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 claim may also include an attorney commission of five percent (5%) for 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 claim or Judgment thereon.



C. Attorney fees and expenses incurred in pending enforcement proceedings prior to the effective date of this Ordinance, pursuant to any prior Ordinances adopted under Act 1 but not collected, shall remain due and owing in accordance therewith and shall be incorporated in any future statement, claim, pleading, Judgment, or Execution. Attorney fees and 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.

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

**ARTICLE VII.**      **Assignment:**

The Municipality assigns the provisions of this Ordinance to any assignee of its claims (including but not limited to Jordan Tax Service), 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 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.**      **Repealer:**

All prior Ordinances are hereby repealed, in whole or in part, to the extent those Ordinances are inconsistent herewith.

ORDAINED AND ENACTED THIS 19<sup>th</sup> DAY OF September 2006.


ATTEST:

  
Borough Secretary/Manager  
Harry Dilmore

BOROUGH OF AVALON

By:   
Council President, Edward Klicker

APPROVED BY MAYOR ON  
Sept. 19, 2006

By:   
David Haslett