

**ORDINANCE NO. 582**

**AN ORDINANCE OF THE CITY OF WEST COLUMBIA, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 19 OF THE CODE OF ORDINANCES OF THE CITY OF WEST COLUMBIA BY THE ADDITION OF ARTICLE VII, "LIEN FOR DELINQUENT MUNICIPAL UTILITY SERVICE"; IMPOSING A LIEN AGAINST THE REAL PROPERTY OF ALL CUSTOMERS PURCHASING UTILITY SERVICE FROM THE CITY OF WEST COLUMBIA, TEXAS, INCLUDING WATER AND WASTEWATER TREATMENT; WHO FAIL TO PAY FOR SAID SERVICE AFTER BEING SERVED WITH THIRTY (30) DAYS WRITTEN NOTICE OF THE CITY'S INTENT TO PERFECT SAID LIEN INTO THE REAL PROPERTY RECORDS OF BRAZORIA COUNTY, TEXAS; SAID LIEN SHALL NOT APPLY TO HOMESTEAD PROPERTY AS DEFINED IN THE TEXAS STATE CONSTITUTION; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF ANY AND ALL KINDS OF ORDINANCES, REGULATIONS, RULES OR POLICIES WHICH ARE IN ANY MANNER INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; PROVIDING THAT THE VIOLATION OF THIS ORDINANCE SHALL CONSTITUTE AN OFFENSE PUNISHABLE BY A FINE OF NOT TO EXCEED TWO THOUSAND DOLLARS (\$2000.00); PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST COLUMBIA, TEXAS:**

**SECTION 1.** Chapter 19 of the Code of Ordinances of the City of West Columbia, Texas entitled "Utilities" shall be and is hereby amended by adding Article VII entitled "Lien for Delinquent Municipal Utility Service", which shall read as follows:

**ARTICLE VII. LIEN FOR DELINQUENT MUNICIPAL UTILITY SERVICE**

**Sec. 19-200. Authority**

The City of West Columbia, Texas, is authorized under Section 552.0025 of the Texas Local Government Code to impose a lien against an owner's property, unless it is a homestead as protected by the Texas Constitution, for delinquent bills for municipal utility service to the property.

**Sec. 19-201. Application of Lien.**

A. The City of West Columbia, Texas, may perfect a lien against the property to which a utility service is provided by the City in the event the customer for service becomes delinquent.

B. Exceptions to the perfection of lien are as follows:

1. The City shall not require a customer to pay for utility service previously furnished to another customer at the same service connection as a condition of connecting or continuing service;
2. The City may not require a customer's utility bill to be guaranteed by third party as a condition of connecting or continuing service;
3. The City may not impose a lien against an owner's property if the property is a homestead protected by the Texas Constitution;
4. The City may not assert a lien with regard to bills for service connected in a tenant's name after notice by the property owner to the City that the City is rental property;
5. The City may not impose a lien with respect to bills for service connected in a tenant's name prior to the effective date of the ordinance imposing the lien.

**Sec. 19-202. Form of Lien.**

A. The City is authorized, at any time on or after ten days following notice by certified mail, return receipt requested letter to the utility patron at the last known mailing address for that patron, of the delinquent bill and the intent to file a lien. The lien, when filed, shall contain:

1. A statement indicating the purpose of the lien;
2. The address of the property which is the subject of the lien, to the extent that address is reasonably ascertainable;
3. A complete legal description of the property which is the subject of the lien;
4. The amount of the delinquent charges, including penalties, interest and collection costs, if any, incurred upon the property as of the date of the execution of the lien; and
5. The account number for the delinquent charges.

B. The lien shall be executed by the City Manager, acknowledged before a notary public and filed among the real property records of Brazoria County, Texas.

C. Absence of receipt of notice does not affect the enforceability perfected under this subchapter.

#### **Sec. 19-203. Priority of Lien.**

The lien for delinquent utility service is superior to all other liens except a bonafide mortgage lien recorded prior to the recording of the City's lien. The City's lien is superior to all other liens including previously recorded judgment liens and any liens recorded after the City's lien.

#### **Sec. 19-204. Additional Charges; Supplemental Liens**

Should additional delinquent charges be incurred subsequent to the date of the original lien's execution, a supplemental lien may be executed and filed, in the form provided above, affixing the additional delinquent charges. The supplemental lien, when filed of record, shall relate back to the date of recording of the original lien and shall become a part of the original lien.

#### **Sec. 19-205. Foreclosure**

The City may file suit to judicially foreclose the lien in a state court of competent jurisdiction. Suit may not be filed prior to the expiration of sixty (60) days following the recording of the lien.

#### **Sec. 19-206. Attorney's Fees and Costs**

The City may, in addition to the charges, interest and costs provided for above, also recover all court costs and attorney's fees incurred in any suit to foreclose the lien and/or to collect the delinquent amount.

#### **Section 19-207. Release of Lien.**

Upon certification by the City that all delinquent charges which existed against the property have been fully paid, the City Manager is authorized to execute a Release of Lien. The Release shall be prepared and approved as to form by the City Attorney and shall be duly acknowledged. All costs associated with the preparation and execution of the Release shall be borne by the person or entity owing the delinquent amount.

#### **Sec. 19-208. Cumulative Remedies.**

The remedies provided above are cumulative of any other remedies, methods or collection or security available to the City under state law. This subchapter does not effect

the City's authority to refuse to furnish utility service to any property when delinquent charges exist with regard to service provided at that property.

## **Section 2**

Any and all Code provisions, rules, ordinances, police regulations, resolutions, and/or informal policies of the City of West Columbia, whether written, or otherwise, which are in any manner in conflict with or inconsistent with this article, shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

## **Section 3**

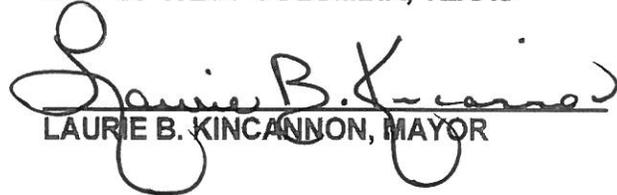
It is hereby declared to be the intention of the City Council that the several provisions of this article are severable, and if any court of competent jurisdiction enters a final order which holds that any section, sub-section, sentence, clause, phrase, or other portion of this article is invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent provision, and any such ruling shall not affect any other provisions of this article which are not specifically designated as being illegal, invalid, or unenforceable.

## **Section 4**

This article shall be effective upon its passage and approval, and the publication of its caption as provided by law.

PASSED AND APPROVED this the 12<sup>th</sup> day of October, 2010.

CITY OF WEST COLUMBIA, TEXAS

  
LAURIE B. KINCANNON, MAYOR

ATTEST:

By: Kelli R. Kuban  
KELLI R. KUBAN, CITY SECRETARY