

RESOLUTION NO. 1787

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, AMENDING REGULATIONS ENTITLED "CUSTOMER ACCOUNTS REGULATIONS" TO PROVIDE FOR REFUNDS OF UTILITY RATES, FEES AND CHARGES, INCLUDING SYSTEM CONNECTION CHARGES, TO CUSTOMERS UNDER LIMITED CIRCUMSTANCES; PROVIDING THAT, IF ANY PROVISION IN THIS RESOLUTION IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, on August 9, 2001, the Town Council adopted Resolution No. 1030 establishing the new "Prescott Valley Utility Regulations" (Regulations); and

WHEREAS, the Prescott Valley Utility Regulations proscribed "early payments" of utility rates, fees and charges, and specifically System Connection Charges, made by customers for the purpose of avoiding anticipated increases in same; and

WHEREAS, on July 11, 2002, the Council adopted Resolution No. 1102 amending the Regulations to incorporate a new methodology for calculating System Capacity Charges and Water Resource Charges for new residential, commercial and industrial uses that connect to the wastewater and water systems, and to expressly provide for "water only" meters; and

WHEREAS, on October 23, 2003, the Council adopted Resolution No. 1228 to clarify that wastewater rates paid by a customer may be reimbursed when it is discovered that a customer's property has not been connected to the wastewater system despite records showing such a connection; and

WHEREAS, on March 13, 2008, Council approved Resolution No. 1570 dissolving the Prescott Valley Water District; and

WHEREAS, on November 4, 2010, the Council approved Resolution No. 1724 amending the Regulations to remove provisions related to administration of customer accounts and administration of improvement districts in order to allow such provisions to be adopted as separate regulations; and

WHEREAS, on November 4, 2010, the Council approved Resolution No. 1725 enacting new "Customer Accounts Regulations" to (i) shorten collection timeframes, (ii) address delinquencies resulting from bankruptcy and foreclosure, (iii) clarify rates, fees and charges based on type of utility account, (iv) clarify parties responsible for rates, fees, charges and penalties incurred on a utility account, and (v) recognize technological improvements that allow for electronic transfer of utility account information; and

WHEREAS, the new Customer Accounts Regulations carried forward the prohibition of “early payments” for utility rates, fees and charges made by customers for the purpose of avoiding anticipated increases in same; and

WHEREAS, on September 21, 2006, being unaware of the restriction in the Customer Accounts Regulations regarding “early payments,” staff inadvertently accepted an “early payment” of System Connection Charges made by a customer who proposed to develop commercial property in the Town of Prescott Valley; and

WHEREAS, the commercial project for which the “early payment” was made was subsequently abandoned prior to the development of same and prior to connection to the system; and

WHEREAS, neither the Prescott Valley Utility Regulations, as amended, nor the Customer Accounts Regulations provide a mechanism for refunding “early payments” that were made in violation of said regulations; and

WHEREAS, the Council desires to amend the Customer Accounts Regulations to provide for a refund in the strictly limited event it is discovered that customers were inadvertently allowed to prepay System Connection Charges for commercial development that was abandoned prior to development and prior to connection to the System; and

WHEREAS, the Council finds that the amendment to the Customer Accounts Regulations is in the best interests of the Town’s utility customers and promotes the health, safety and welfare of the Town and the customers that it serves;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, AS FOLLOWS:

1. That the Customer Accounts Regulations be hereby amended as follows:

**TOWN OF PRESCOTT VALLEY
Customer Accounts Regulations**

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5.0 UTILITY SERVICE

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5.2 Billing and Payments.

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5.2.7 Refunds May be Appropriate in Limited Circumstances. Nothing herein shall preclude the Town from refunding System Connection Charges to Customers in the event it is discovered that Customers were inadvertently allowed to prepay System Connection Charges, despite these

regulations to the contrary, for commercial development projects that were abandoned prior to development and prior to connection to the System.

5.2.75.2.8 *Delinquent Payments.* Utility rates, fees, charges, penalties and taxes are delinquent on the twenty-eighth (28th) day after the billing date.

5.2.85.2.9 *Special Payment Agreement with Tenant.* Nothing herein precludes the Town from entering into a special payment agreement with a Tenant who is ready, willing and able to guarantee payments on a real property owner's delinquent Utility Account for the purpose of continuing Utility Service to real property leased by Tenant. In such case, the Town will not be liable to reimburse the Tenant for any amounts paid; rather, any reimbursement will be a matter solely between the Tenant and the owner(s) of the subject property. This provision applies in those instances where a real property owner of a leased property, at its sole discretion, contracts for Utility Service to the real property leased by Tenant and agrees to pay for said services.

5.2.95.2.10 *Non-Sufficient Funds Payments.* In the event checks used to make payments are returned for non-sufficient funds (or for any reason), a Non-Sufficient Funds Check Charge, set from time to time by resolution of the Town Council, will be assessed to the Utility Account. Payment to redeem the returned check will only be accepted in certified funds. If checks are returned after the delinquency date, the account will become delinquent and, in addition to the Non-Sufficient Funds Check Charge, will also be subject to the Active Account Processing Charge and other delinquent account enforcement processes set forth herein (including immediate disconnection). Nothing herein shall preclude the Director from using alternate collection procedures for non-sufficient fund checks including, but not limited to, participating in the Yavapai County Attorney's collection program, using a collection service, and providing information directly to credit reporting services.

5.2.105.2.11 *Payments Designating Incorrect Accounts.* In the event a Utility Account becomes delinquent because Customers have identified the incorrect account when making payments, the Active Account Processing Charge and other enforcement processes may apply as determined by the Director based on all of the circumstances. Designated staff will endeavor to correctly post any improperly designated payments to the right account and provide such reimbursements and new billing as are reasonably permitted by applicable law.

5.2.115.2.12 *Application of Payments.* Base User Rates will be applied to the current billing period while Volume Rates and all other utility rates, fees, charges, penalties, and taxes will be applied to the prior billing period. Payments (including partial payments) will be applied to the oldest outstanding account balances in equal amounts to the applicable rates, fees, charges, penalties and taxes. Partial payments will not prevent Utility Service turn-off or renew Utility Service (except as specified in payment agreements provided for in Subsection 6.5.6 herein and where the amount at issue is \$10.00 or less and the Town Manager approves).

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2. That, if any provision in this Resolution is held invalid by a court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

3. That this Resolution shall be effective after its passage and approval according to law.

RESOLVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 12th day of April 2012.

Harvey C. Skoog, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney