

**VILLAGE OF PORT DICKINSON  
Village Board Meeting Agenda  
March 10, 2020  
6:00 pm  
Port Dickinson Village Hall**

***Please take a moment to ensure that your cellphones are OFF or SILENCED.***

CALL TO ORDER

PUBLIC HEARING:

APPROVAL OF MINUTES: February 11 & 25, 2020 meetings

PUBLIC PARTICIPATION:  
County Executive presentation

TREASURER'S REPORT:

AUDIT & PAYMENT OF CLAIMS #15 (2019-2020)

1. Abstract of Unaudited vouchers for the General Fund for \$21,009.06
2. Abstract of Unaudited vouchers for the Water Fund for \$223.05

COMMUNICATIONS:

TRUSTEE-COMMISSIONER REPORTS:

Administration/Community Association – Charles Harding, Trustee

Public Works – Michael Cashman, Trustee

Planning – Comprehensive Plan Public Open House, Tuesday, 4/21/2020, 3:00PM-6:00PM

Public Safety – James DeGennaro, Trustee

Parks, Water & Sewer – Robert Aagre, Trustee

*1. Water main leaks cost everyone money and need to be repaired as quickly as possible. Some leaks are quiet leaks and difficult to hear with the listening devices the Village now uses. On Monday of this week, the Village supervised 2 excavations to repair suspected leaks: one on Chenango Street and the other at the intersection of Kinney and Miller. Both leaks were found and both repaired.*

*The Village is also investigating the purchase of a newer piece of listening equipment, to better pinpoint suspected leaks. But, before we purchase the new system, we are going to try out a newer improved headset system that can be used with our current older model detector. Hopefully, we will not need to purchase the entire new unit, which costs \$3,700.*

*2. I am pleased to announce that the New York State Urban Forestry Council has approved the \$1,000 Grant Request I submitted in January. The funds will pay for the various costs of this year's tree planting throughout the Village and for tree maintenance in the Park. Residents wishing to have a free tree planted on their property should contact Bob Aagre at Village Hall.*

Zoning Board of Appeals – none

OLD BUSINESS:

RESOLUTIONS FOR APPROVAL:

1. NYCOM letter opposing proposing small cell siting mandate
2. Resolution authorizing the Mayor to sign Emergency Services Dispatch Agreement
3. Resolution amending the Procurement Policy
4. Resolution re-establishing Reserve funds
5. Resolution approving revised Water/Sewer Shutoff Procedures

NEW BUSINESS/DISCUSSION:

ADJOURNMENT

# **VILLAGE OF PORT DICKINSON WATER/SEWER SERVICE SHUTOFFS DUE TO UNPAID BILLS: A PROCEDURAL GUIDE**

## **Introduction**

As both state and local law make clear, the Village of Port Dickinson has the power to shut off water/sewer service to the properties of account holders who fail to timely pay their water/sewer bills. However, because Village residents have a constitutionally protected property interest in continued water/sewer service, they must be afforded due process before the shutoff date. In this context, due process involves advance notice and proper service thereof, the right of the account holder or any tenant living in the account holder's building to request a hearing and, if necessary, holding a due process hearing before a duly appointed Village hearing officer, a subsequent written determination of a said hearing officer and a second notice of the new, post-hearing shutoff date.

The purpose of this document is to serve as a step-by-step procedural guide to the water/sewer shutoff process when it is commenced as the result of an account holder's failure to timely pay his/her/its water/sewer bill. In order to ensure that the Village can achieve its goal of collecting water/sewer rents before they are rolled into the real property tax levy without infringing upon residents' constitutionally protected property rights, each of the steps described herein should be carefully followed.

If any questions should arise as to the procedure outlined below, please refer to Chapters 49 of the Village Code for Sewer shut-offs or Chapter 62 of the Village Code for Water Shut-offs. Additionally refer to Public Service Law § 89-b or contact Attorney for the Village Coughlin & Gerhart, LLP.

## **Water/Sewer Shutoff Procedure**

**THE FOLLOWING PROCEDURES ARE THE SAME FOR BOTH WATER AND SEWER SHUT-OFFS BUT THE FORMS MAY BE DIFFERENT. DOUBLE CHECK TO MAKE SURE YOU ARE USING THE CORRECT FORM.**

### **1. NOTICE OF WATER/SEWER SHUTOFF**

Initially, it should be noted that the Village cannot shut off water or sewer service due to an unpaid water/sewer bill until the bill becomes delinquent.

Pursuant to Village Code § 62-8, water bills become late if they go unpaid for 30 days from the date the bill is issued. Once the bill becomes late, an additional 15% service charge is added to the bill. If no payment has been received after an additional 20 days, or 50 days from the date the bill was issued, bill becomes delinquent and the water may be shut off.

Pursuant to Village Code § 49-9 sewer bills become late if they go unpaid for 30 days from the date the bill is issued. Once the bill becomes late, an additional 15% service charge is added to the bill. If no payment has been received after an additional 20 days, or 50 days from the date the bill was issued, bill becomes delinquent and the sewer may be shut off.

**If an account holder's water or sewer bill becomes delinquent, and the Village wishes to commence the shutoff process, the Village must:**

- Serve the **Pre-Hearing Notice of Water Shutoff** (attached hereto as **Appendix A-1**) OR the **Pre-Hearing Notice of Sewer Shutoff** (attached hereto as **Appendix A-2**), at least **fifteen (15) days prior** to the anticipated shutoff date.
- The notice must be served by **certified mail** upon:
  - All owners of the property
  - The account holder, if different than the property owner(s)
  - The superintendent or person in charge of the building or premises, if one can be readily ascertained, and if different than the property owner(s)
- Post the **Pre-Hearing Notice of Water Shutoff** OR **Pre-Hearing Notice of Sewer Shutoff** on the front door of the affected building **at least fifteen (15) days prior** to the anticipated water/sewer shutoff date.
  - This posted notice suffices to notify all tenants of the impending water or sewer shutoff in the affected building; they need not be identified or served by mail.

The purpose of the Pre-Hearing Notice of Water/Sewer Shutoff is (1) to notify all necessary and proper parties that the water/sewer bill is delinquent and that water/sewer shutoff proceedings have been commenced; and (2) that ALL such parties – including tenants who are not account holders – have a right to request a hearing regarding the impending shutoff.

**NOTE:** Under no circumstances may the Village commence the shutoff process against any account holder receiving public assistance **IF** the water/sewer bill is to be paid directly by the State Office of Temporary and Disability Assistance or by the Broome County Department of Social Services.

## 2. PRE-SHUTOFF HEARING REQUEST

As stated above, all owners and tenants of a building subject to a Pre-Hearing Notice of Water/Sewer Shutoff have the right to request a hearing before a hearing officer appointed by the Mayor. **To properly request a hearing, the party must:**

- Make a **written request** to the Village Clerk
- Be **postmarked at least five (5) days prior** to the anticipated shutoff date on the Pre-Hearing Notice.
- Be sent via **certified mail**.

**Note:** The Village is not obligated to entertain untimely or improper hearing requests. Timely, hand-delivered hearing requests should be entertained.

**IF A NECESSARY OR PROPER PARTY FAILS TO TIMELY AND/OR PROPERLY REQUEST A PRE-SHUTOFF HEARING, THE VILLAGE MAY PROCEED WITH THE SHUTOFF ON THE DATE LISTED ON THE PRE-HEARING NOTICE.**

## 3. NOTICE OF PRE-SHUTOFF HEARING

If a necessary or proper party timely requests a pre-shutoff hearing, **the Village must:**

- Schedule a hearing date before a duly appointed hearing officer **within 30 days of receipt of the hearing request.**
- Provide the requesting party AND, if different, any owner(s) of the property with a completed copy of the **Pre-Shutoff Hearing Notice (attached hereto as Appendix B) via first class mail.** This form is the same for both water and sewer shutoffs.

#### **4. PRE-SHUTOFF HEARING & DECISION OF HEARING OFFICER**

The pre-shutoff hearing shall be held at the time and place described in the Pre-Shutoff Hearing Notice. A hearing officer appointed by the Mayor will preside over the hearing, which shall not be subject to the technical rules of evidence. In other words, the hearing officer need not require, for example, that the proper foundation be laid before evidence is admitted for his/her consideration. The idea is to allow the party requesting the hearing to freely present any relevant evidence tending to indicate that water/sewer service to the premises should not be shut off.

After considering all of the evidence and giving it appropriate weight relative to its credibility and persuasiveness, **the hearing officer shall issue a written decision**, whether or not he/she announces a decision orally at the hearing. **The written decision must:**

- Provide a new date when the Village will shut off the water/sewer at the affected property
- Be sent via **first class mail, within fifteen (15) days of the hearing date**, to the property owner(s) **AND** any tenant(s) of the property who appeared at the hearing

#### **Important Notes Regarding Shutoff Decisions**

- The law limits the days and times when water/sewer service can be shut off for nonpayment of bills. **Service may be shut off Monday through Thursday, 8 a.m. to 6 p.m., and Friday 8 a.m. to 12 p.m. ONLY. Service CANNOT BE SHUT OFF on Friday after 12 p.m., on weekends or on public holidays.**
- However, there is no legal requirement for the length of time that must pass between the due process hearing and the water/sewer shutoff date. Technically speaking, it could be scheduled for the following day, the following month, etc. The evidence presented at the hearing should inform the hearing officer's scheduling of the new shutoff date.
- If a tenant of the affected property appears at the hearing and provides evidence that the cost of water/sewer service is included in his/her rent, and that the tenant is current on said rent, the hearing officer must give the tenant the opportunity to "take over" the property owner's account and to be billed directly for Village water/sewer service, if he/she so requests. If this situation arises, in no way does it impair the ability of the hearing officer to schedule a new water/sewer shutoff date in the event that the tenant or some other party fails to rectify the delinquent account balance.

#### **5. POST-HEARING WATER/SEWER SHUTOFF NOTICE**

The **Post-Hearing Water Shutoff Notice (attached hereto as Appendix C-1)** OR the **Post-Hearing Sewer Shutoff Notice (attached hereto as Appendix C-2)** should be posted on the premises after the hearing officer decides that the water/sewer shutoff should move forward, and should contain the new water/sewer shutoff date noted in the hearing officer's written decision (*see* Point 4, above). There is no time limitation for posting this second water/sewer shutoff notice, though it is recommended that the Post-Hearing Notice be posted within 24 hours of the mailing of the written decision.

**AFTER THIS FINAL NOTICE, IF THE BILL AND ALL ADDITIONAL SERVICE CHARGES AND LATE FEES ARE NOT PAID BEFORE THE SHUTOFF DATE, THE VILLAGE MAY SHUT OFF SERVICE TO THE PREMISES.**

## **APPENDIX A-1**

### **Pre-Hearing Notice of Water Shutoff**

# NOTICE OF WATER SHUTOFF

**Date:**

**Account No.:**

**Address:**

The water bill bearing the above-referenced account number is more than thirty (30) days past due. Accordingly, pursuant to Village Code §§ 62-8 and 62-16, **your water will be shut off fifteen (15) days from the date listed at the top of this Notice** unless the bill is paid in full, including all additional service charges and late fees, as applicable.

**The anticipated water shutoff date is:** \_\_\_\_\_

All owners and/or tenants of these premises wishing to dispute the impending water shutoff are entitled to request a hearing before a Village hearing officer. In order to request a hearing, you must submit a written request via certified mail to the Village of Port Dickinson Clerk, 786 Chenango Street, Binghamton, N.Y. 13901. **Your request must be postmarked at least five (5) days prior to the anticipated water shutoff date listed above. Untimely hearing requests WILL NOT be considered.**

If your water is shut off, payment of a service charge of \$75.00 is required prior to restoration of service to these premises.



## **APPENDIX A-2**

### **Pre-Hearing Notice of Sewer Shutoff**

## NOTICE OF SEWER SHUTOFF

**Date:**

**Account No.:**

**Address:**

The sewer bill bearing the above-referenced account number is more than thirty (30) days past due. Accordingly, pursuant to Chapter 49 of the Village Code, **your sewer will be shut off fifteen (15) days from the date listed at the top of this Notice** unless the bill is paid in full, including all additional service charges and late fees, as applicable.

**The anticipated sewer shutoff date is:** \_\_\_\_\_

All owners and/or tenants of these premises wishing to dispute the impending sewer shutoff are entitled to request a hearing before a Village hearing officer. In order to request a hearing, you must submit a written request via certified mail to the Village of Port Dickinson Clerk, 786 Chenango Street, Binghamton, N.Y. 13901. **Your request must be postmarked at least five (5) days prior to the anticipated sewer shutoff date listed above. Untimely hearing requests WILL NOT be considered.**

## **APPENDIX B**

### **Pre-Shutoff Hearing Notice**

\_\_\_\_\_, 2019

(Name)

(Address)

Village of Port Dickinson, NY 13901

Re: Delinquent Village (Water/Sewer) Bill (Account No.: \_\_\_\_\_) Notice of Pre-Shutoff Hearing

Dear Mr./Ms. (Name):

The Village is in receipt of your request for a hearing regarding the impending (water/sewer) shutoff to the premises located at (address). **Your request has been granted, and a hearing has been scheduled for (Date) at (time) a.m. / p.m. at Port Dickinson Village Hall, Board Room, 786 Chenango Street, Binghamton, N.Y. 13901.**

At the hearing, you may be represented by an attorney, and you shall have the right to submit relevant evidence. A duly appointed Village hearing officer will consider the evidence, afford it the appropriate weight and make a determination as to whether or not the (water/sewer) shutoff will proceed. Subsequently, the hearing officer will issue a written decision, which you will receive by mail within fifteen (15) days of the date of the hearing.

If you have any questions regarding your upcoming hearing, please contact the Department of Public Works at 607-771-8233.

Sincerely,

## **APPENDIX C-1**

### **Post-Hearing Water Shutoff Notice**

## NOTICE OF WATER SHUTOFF

**Date:**

**Account No.:**

**Address:**

After a hearing held on [Date], a duly appointed Village hearing officer has confirmed that water service to these premises will be shut off due to the fact that the water bill bearing the above-referenced account number is more than thirty (30) days past due. In accordance with the hearing officer's determination, **your water will be shut off on the date listed below** unless the bill is paid in full, including all additional service charges and late fees, as applicable.

**The water shutoff date is:** \_\_\_\_\_

If your water is shut off, and you wish to have your water restored during the next available regular business hours (7AM-2PM Monday-Friday), payment of a service charge of \$75.00 along with the outstanding balance and all accrued interest is required prior to restoration of service to these premises.

If staff is available, you may have your water service restored to the premises at any other time upon payment of a service charge of \$250.00 along with the outstanding balance and all accrued interest.

## **APPENDIX C-2**

### **Post-Hearing Sewer Shutoff Notice**

## NOTICE OF SEWER SHUTOFF

**Date:**

**Account No.:**

**Address:**

After a hearing held on [Date], a duly appointed Village hearing officer has confirmed that sewer service to these premises will be shut off due to the fact that the sewer bill bearing the above-referenced account number is more than thirty (30) days past due. In accordance with the hearing officer's determination, **your sewer will be shut off on the date listed below** unless the bill is paid in full, including all additional service charges and late fees, as applicable.

**The sewer shutoff date is:** \_\_\_\_\_

If your sewer is shut off and you wish to have your sewer restored during the next available regular business hours (7AM-2PM Monday-Friday), payment of a service charge of \$75.00 along with the outstanding balance and all accrued interest is required prior to restoration of service to these premises.

If staff is available, you may have your sewer service restored to the premises at any other time upon payment of a service charge of \$250.00 along with the outstanding balance and all accrued interest.