

**MAHONING TOWNSHIP
MONTOUR COUNTY, PENNSYLVANIA
ORDINANCE NO. ____**

AN ORDINANCE REQUIRING DISCONNECTION OF ILLEGAL STORM/SURFACE/GROUND WATER CONNECTIONS TO THE SANITARY SEWER SYSTEM; ESTABLISHING PROVISIONS FOR INSPECTIONS TO DETERMINE IF STORM/SURFACE/GROUND WATER IS ENTERING THE SANITARY SEWER SYSTEM; REQUIRING EVIDENCE OF COMPLIANCE UPON THE SALE OF REAL PROPERTY; ESTABLISHING PENALTIES AND ENFORCEMENT REMEDIES; PROVIDING PROVISIONS FOR APPEAL; GRANTING AUTHORITY TO THE MAHONING WATER AND SEWER AUTHORITY TO ENFORCE THIS ORDINANCE:

WHEREAS, illegal storm/surface/ground water connections to sanitary sewer systems are a leading contributor to sewage basement backups and sanitary sewer overflows, and create a public health nuisance; and

WHEREAS, the Township has determined it is reasonable and necessary to reduce the inflow of storm/surface ground water into the Authorities sanitary sewer system (hereinafter "Sanitary Sewer System"); and

WHEREAS, the Township has determined that it is reasonable and necessary to establish a compliance program effective upon the sale or purchase of any real property (as defined in this Ordinance) located within the Township; and

WHEREAS, the Township has determined that such regulations as adopted herein are reasonable and necessary for the health, safety, and welfare of the Township's residents; and

WHEREAS, the Township has determined that enforcement of this Ordinance by the Mahoning Water and Sewer Authority is in accordance with the purposes of the Mahoning Water and Sewer Authority in constructing, improving, maintaining and operating the Sanitary Sewer System:

NOW, THEREFORE, Be it resolved, and it is hereby resolved, by the Mahoning Township Board of Supervisors as follows:

1. DEFINITIONS.

When used herein, the following words shall have the following meanings:

- a. Applicant: Any Person (defined below) Selling Real Property (defined below) or Purchasing Real Property (defined below) located within the Township.
- b. Township: The Mahoning Township, Montour County, Pennsylvania.
- c. Evidence of Compliance Certificate: A certificate from the Mahoning Township Municipal Authority confirming that it has on file a written report or statement from an Inspector (defined below) certifying there is not located on a property any

Illegal Connections (defined below) into the Sanitary Sewer System (defined below).

d. **Illegal Connections:** Connections to the Sanitary Sewer System that allow storm/surface/ground water to be discharged into the Authority's Sanitary Sewer System from sources including, but not limited to, floor drainage, sump pumps, down spout drainage, roof drainage, and areaway drainage.

e. **Inspection:** The term "Inspection" shall include physical inspection, dye testing (a commonly accepted plumbing test whereby a nontoxic, non-staining dye is introduced into the storm/surface/ground water collection system of real property to determine if any storm/surface/ground water is entering the Sanitary Sewer System), smoke testing to detect roof leaders, and any other reasonable and appropriate testing methodology(ies) acceptable to the Mahoning Water and Sewer Authority to determine if any storm/surface/ground water is entering the Sanitary Sewer System.

f. **Inspector:** A representative of the MTMA.

g. **MTMA:** The Mahoning Township Municipal Authority, its agents, consultants, contractors, or other designated representatives authorized to act on its behalf.

h. **Person:** Any natural person, partnership, association, authority, syndicate, firm, corporation, developer, contractor, government, or other entity recognized by law as the subject of rights and duties.

i. **Purchase Real Property, Purchasing Real Property.** The terms "Purchase Real Property", "Purchasing Real Property" include any and all acquisitions of title to real property with or without consideration.

j. **Purchaser:** A Person acquiring title to real property with or without consideration.

k. **Sale of Real Property, Sell Real Property/Selling Real Property:** The terms "Sale of Real Property", "Sell Real Property" and "Selling Real Property" include any and all transfers or changes in ownership of real property, with or without consideration.

l. **Sanitary Sewers:** Sewers designed and built to carry sanitary sewage and/or industrial waste separately from water discharge.

m. **Sanitary Sewer System:** The entire Sewer System of the Township operated by the MTMA.

n. **Seller.** A Person transferring or conveying title to real property to another Person.

o. **Storm Sewer System:** A sewer system designed to accept and transport flows of storm/surface/ground water, as distinct from sewage.

p. Temporary Evidence of Compliance Certificate: A certificate from the MTMA issued pursuant to Section 6 of this Ordinance.

2. PROHIBITIONS.

a. From and after the effective date of this Ordinance, it shall be unlawful for any Person to construct, install, maintain, repair, operate, use, or allow an Illegal Connection to the Sanitary Sewer System on real property owned by that Person. This prohibition expressly includes, without limitation, Illegal Connections made prior to the effective date of this Ordinance, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

b. From and after the effective date of this Ordinance it shall be unlawful for any Person whose real property is connected to the Sanitary Sewer System to Sell Real Property located within the Township on which a building or improvement exists without first obtaining and delivering to the Purchaser (defined above) an Evidence of Compliance Certificate or a Temporary Evidence of Compliance Certificate from the MTMA as required under this Ordinance.

c. From and after the effective date of this Ordinance it shall be unlawful for any Person (Purchaser) to Purchase Real Property located within the Township connected to the Sanitary Sewer System on which a building or improvement exists without first obtaining from a Seller a valid Evidence of Compliance Certificate or a Temporary Evidence of Compliance Certificate.

3. DISCONNECTION OF ILLEGAL CONNECTIONS.

Illegal Connections must be disconnected from the Sanitary Sewer System and redirected, as appropriate, to either a separate Storm Sewer System, or another appropriate legal place. Connection of the Illegal Connection to the Township's separate Storm Sewer System is subject to the prior approval of the Township and the MTMA. In no event is water to be discharged from the Illegal Connection upon or across public or private sidewalks, or discharged onto adjacent property. Prior to the commencement of any work on the disconnection of an Illegal Connection, all necessary and required building permits, street opening permits, sidewalk opening permits, tap-in permits, and other approvals and permits that may be necessary to accomplish the disconnection shall be acquired, and all fees paid, and a plan of corrective action shall be presented to the MTMA, for MTMA's approval, on a MTMA Corrective Action Plan form (Plan Form). Disconnection shall mean that the Illegal Connection is disconnected and removed from the Sanitary Sewer System, and that the Illegal Connection access to the Sanitary Sewer System at that location is permanently capped and sealed. The disconnection of the Illegal Connection shall be certified by an Inspector on the MTMA Plan Form.

4. SALES OF REAL PROPERTY/EVIDENCE OF COMPLIANCE CERTIFICATE.

a. Any Person Selling Real Property (Applicant) located within the Township, whose real property is connected to the Sanitary Sewer System, shall have said real property inspected by a MTMA Inspector or representative. Said Person shall arrange for an Inspection by obtaining an Application for Evidence of Compliance Certificate (Application) from the MTMA, submitting the completed Application to the MTMA, and paying such fee(s) and cost(s) as required by the MTMA. Upon completion of the Inspection, the Inspector shall complete the appropriate section of the Inspection Results form (Results Form) confirming that the property has been inspected and certifying the results of such Inspection.

(1) If the Inspector determines that there are no Illegal Connections on the real property he shall so note on the Results Form and the Application, and the MTMA shall issue the Evidence of Compliance Certificate promptly after the MTMA's receipt of the properly completed Application and Results Form.

(2) If the Inspector determines that there is/are Illegal Connection(s) on the real property he shall so note on the Results Form, and the Applicant shall present a plan of corrective action, for MTMA's approval, on a MTMA Plan Form. The time period for the completion of the remedial work (based upon the extent of the work required and the existing conditions) shall be such as the MTMA will approve. After the corrective action has been taken, the Applicant shall submit a report thereof to the MTMA on the MTMA's Corrective Action Report form (Report Form) and pay any additional fee(s) and cost(s) required by the MTMA. The real property will be re-inspected, and if the Inspector determines that there are then no Illegal Connections on the real property he shall so certify on the Report Form, and the MTMA shall issue the Evidence of Compliance Certificate promptly after the MTMA's receipt of the completed Application and the Report Form.

(3) If the re-inspection reveals the existence of any Illegal Connections, the Inspector shall so certify on the Results Form, and the MTMA shall reject the Application as per Section 7 of this Ordinance.

b. An Evidence of Compliance Certificate shall expire three (3) years following the date of its issuance. If any additions are made to the property within the three (3) year period, a certification shall be obtained from an Inspector that the addition has no Illegal Connections.

5. PURCHASE OF REAL PROPERTY/EVIDENCE OF COMPLIANCE CERTIFICATE.

a. Any Person Purchasing Real Property (Purchaser) located within the Township connected to the Sanitary Sewer System on which a building or improvement exists without first obtaining from a Seller a valid Evidence of Compliance Certificate or a Temporary Evidence of Compliance Certificate shall have said real property inspected by a MTMA Inspector. Said Person shall arrange for an Inspection by obtaining an Application for Evidence of Compliance Certificate, (Application) from the MTMA, submitting the completed Application to the MTMA and paying such fee(s) and cost(s) as required by the MTMA. Upon

completion of the inspection, the Inspector shall complete the appropriate section of the Inspection Results form (Results Form) confirming that the property has been inspected and certifying the results of such Inspection.

(1) If the Inspector determines that there are no Illegal Connections on the real property he shall so note on the Results Form and the Application, and the MTMA shall issue the Evidence of Compliance Certificate promptly after the MTMA's receipt of the properly completed Application and Results Form.

(2) If the Inspector determines that there is/are Illegal Connection(s) on the real property he shall so note on the Results Form, and the Applicant shall present a plan of corrective action, for MTMA's approval, on a MTMA Plan Form. The time period for the completion of the remedial work (based upon the extent of the work required and the existing conditions) shall be such as the MTMA will approve. After the corrective action has been taken, the Applicant shall submit a report thereof to the MTMA on the MTMA's Corrective Action Report form. (Report Form) and pay any additional fee(s) and cost(s) required by the MTMA. The real property will be re-inspected, and if the Inspector determines that there are then no Illegal Connections on the real property he shall so certify on the Application and the Report Form, and the MTMA shall issue the Evidence of Compliance Certificate promptly after the MTMA's receipt of the properly completed Application and Report Form.

(3) If the re-inspection reveals the existence of any Illegal Connections, the Inspector shall so certify on the Results Form, and the MTMA shall reject the Application as per Section 7 of this Ordinance.

c. An Evidence of Compliance Certificate shall expire three (3) years following the date of its issuance. If any additions are made to the property within the three (3) year period, a certification shall be obtained from an Inspector that the addition has no Illegal Connections.

6. TEMPORARY EVIDENCE OF COMPLIANCE CERTIFICATE.

a. In the event that an Illegal Connection is discovered pursuant to Section 4 of this Ordinance, and the Applicant believes that it would create an undue hardship to perform the necessary corrective action prior to the date of closing on the sale of the property, the Applicant may apply to the MTMA for a Temporary Evidence of Compliance Certificate on a MTMA-approved form. The MTMA may issue a Temporary Evidence of Compliance Certificate upon the payment of such fee(s) and cost(s) as the MTMA may from time to time establish, and provided there is strict compliance with all the following conditions:

(1) The MTMA is provided with a bona fide, executed contract (hereinafter "Contract") between the Applicant and a contractor requiring the contractor to complete the necessary remedial work to correct and/or disconnect and remove the Illegal Connection, and granting the MTMA the right and power to enforce the Contract as a third-party beneficiary. The time period set forth in the

Contract for the completion of the remedial work (based upon the extent of the work required and the existing conditions) shall be such as the MTMA will approve;

(2) Cash security (hereinafter "Security") in the amount of 120% of the price of the Contract is deposited with the MTMA or provision is made that, at closing, a Security in the amount of 120% of the price of the Contract shall be collected by the closing agent for the MTMA and immediately deposited with the MTMA. The Security shall be held by the MTMA in a non-interest bearing account. Security shall be limited to cash, certified checks and treasurer's checks.

(3) A written agreement between the Purchaser or transferee and the MTMA under which the Purchaser or transferee agrees to be responsible for all cost overruns related to the remedial work together with a grant to the MTMA of a license to enter upon the property to complete the work at the expense and cost of the Purchaser or transferee should the contractor or the Applicant default on the Contract. Any cost overrun exceeding the Security posted with the MTMA shall remain the sole and exclusive liability of the Purchaser or transferee and constitute a recordable lien against the real property.

b. The Temporary Evidence of Compliance Certificate shall be effective for no more than sixty (60) days, and the expiration date shall be noted thereon. In the event the required remedial work necessitated by the Sale of Real Property is not practical due to the absence of available remedies, and where the MTMA has adopted a plan of corrective action applicable to the Sanitary Sewers serving such real property, then the Temporary Evidence of Compliance Certificate shall be extended until the planned corrective action is completed. In such event, the MTMA shall set security in the amount of 120% of the price of the Applicant's anticipated pro-rata cost of the anticipated remedial work.

c. If, upon expiration of the Temporary Evidence of Compliance Certificate, all remedial work has not been completed and Evidence of Compliance Certificate has not been issued, the Security deposited with the MTMA shall be forfeited and the MTMA may use said Security to have the required remedial work completed.

7. REJECTION OF APPLICATION.

The MTMA may reject an Application for an Evidence of Compliance Certificate or for a Temporary Evidence of Compliance Certificate whenever the requirements of this Ordinance have not been met. In the event of such a rejection, the Applicant may, within fifteen (15) days of the rejection, file an appeal with an appropriate appellate body.

8. MWSA RESOLUTIONS.

The MTMA may, by Resolution, adopt any or all of the following in order to accomplish the purposes of this Ordinance:

a. Establish and promulgate any and all forms, fees, procedures, regulations and/or guidelines necessary to implement and effectuate the objectives and purposes of this Ordinance.

b. Establish the procedures and guidelines for the retention, release, and/or payment of any Security held by the MTMA under and pursuant to Section 6 above.

9. ACCESS AND INSPECTION.

a. Upon presentation of proper credentials, duly authorized representatives of the Authority may enter at reasonable times upon any property within the Township to perform Inspections to determine compliance with this Ordinance. The MTMA shall notify the property owner within 24 hours of entry.

b. Property owners shall allow persons working on behalf of the Authority ready access to all parts of the premises for the purposes of determining compliance with this Ordinance.

c. If a property has security measures in force which require proper identification and clearance before entry into its premises, the owner and/or possessor shall, upon reasonable notice by the MTMA, make the necessary arrangements to allow access by representatives of the MTMA.

d. The owner and/or possessor of the property shall allow the MTMA reasonable access to all parts of a property necessary to the Inspections of the property. The MTMA shall have the right to set up on any property such devices as are necessary in the opinion of the MTMA to conduct Inspections of the property.

e. Any temporary or permanent obstruction to safe and easy access to the property to be Inspected shall be promptly removed by the owner and/or possessor of the property at the oral or written request of the MTMA and shall not be replaced until such Inspection is completed and/or any violations of this Ordinance are corrected and such corrections are certified by an Inspector.

f. The MTMA may provide notice of the Inspections of a property or properties orally or by written notice or publication. Notice is required if the owner and/or possessor specifically refuses access.

g. If the MTMA has been refused access to any part of a property on which an Illegal Connection is suspected, and the MTMA is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to Inspect and/or sample as part of a routine program of Inspection and sampling designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the MTMA may seek issuance of a search warrant from any court of competent jurisdiction.

10. PENALTIES.

11. NOTICE OF NON-COMPLIANCE/VIOLATION.

Whenever the MTMA finds that a non-compliance or violation of this Ordinance has occurred, the MTMA may order compliance by written Notice of Non-Compliance/Violation. Said Notice may be served personally on the owner and/or possessor of the property, or by leaving the same at the principal building on the property, or by posting the same conspicuously on the property, or by certified mail sent to the address of the property or at such other address for the owner and/or possessor as maintained in the Township or County of Montour records.

a. The Notice of Non-Compliance/Violation shall contain:

- (1) The name and address of the alleged non-complier/violator;
- (2) The address when available or a description of the building, structure or land upon which the non-compliance/violation is occurring, or has occurred;
- (3) A statement specifying the nature of the non-compliance/violation;
- (4) A description of the remedial measures necessary to restore compliance with this Ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the Person to whom the Notice of Non-Compliance/Violation is directed; and
- (6) A statement that the determination of violation may be appealed by filing a written notice of appeal with an appropriate appellate body within fifteen (15) days of the service of Notice of Non-Compliance/Violation.

b. Such Notice of Non-Compliance/Violation may require without limitation:

- (1) The performance of Inspections, monitoring, analyses, and reporting;
- (2) The elimination, disconnection, and removal of the Illegal Connection(s) in accordance with Section 3, of this Ordinance; and
- (3) That the Person whose discharges, practices, or operations are in noncompliance/violation of this Chapter shall cease and desist from such non-compliance/violations.

12. APPEAL OF NOTICE OF NON-COMPLIANCE/VIOLATION.

Any Person receiving a Notice of Non-Compliance/Violation may appeal the determination of violation by filing a written notice of appeal with an appropriate appellate body within fifteen (15) days of the service of the Notice of Non-Compliance/Violation.

13. ENFORCEMENT MEASURES.

a. If the non-compliance/violation(s) has/have not been corrected in accordance with the provisions and/or times established pursuant to this Ordinance, the MTMA is authorized to take any and all measures necessary to abate the non-

compliance/violation, disconnect and remove the Illegal Connection(s), and/or restore the property. The costs of the enforcement measures taken by the MTMA shall constitute a recordable lien against the property.

b. Where correction of the non-compliance/violation cannot be made in accordance with the provisions and/or times established pursuant to this Ordinance, upon proof to the MTMA of a Contract for performance of the correction work, or other document satisfactory to the MTMA showing good faith commencement of correction of the non-compliance/violation, abatement by the MTMA may be delayed up to a maximum of sixty (60) days after the Notice of Non-Compliance/Violation or, in the case of appeal, for a maximum of sixty (60) days after the decision of the appellate body upholding the determination of non-compliance/violation made by the MTMA.

14. DANGER TO PUBLIC HEALTH OR SAFETY.

In the event a non-compliance/violation of this Ordinance constitutes an immediate danger to public health or public safety, the MTMA is authorized to take any and all measures necessary to abate the non-compliance/violations, disconnect and remove the Illegal Connection(s), and/or restore the property. The costs of the measures taken by the MTMA shall constitute a recordable lien against the property.

15. NUISANCE/INJUNCTIVE AND OTHER RELIEF.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of the provisions of this Ordinance is a threat to public health, safety, welfare, and the environment and is declared and deemed to be a nuisance, and the MTMA may seek abatement thereof by injunctive or other equitable relief as provided by law.

16. CUMULATIVE REMEDIES/RECOVERY OF FEES AND COSTS.

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, State or local law, and the MTMA may seek cumulative remedies. The MTMA may recover attorney's fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

17. REPEALER.

Any Ordinance or Resolution or part thereof conflicting with the provisions of this Ordinance, is hereby repealed so far as the same affects this Ordinance.

18. EFFECTIVE DATE.

This Ordinance shall take effect on January 1, 2009, and shall apply to the closing or settlement of any Sale of Real Property, on or after that date, without regard to the date of any agreement or contract under which the sale occurred.

DULY ORDAINED AND ENACTED this 20th day of October, 2008, by the Board of Supervisors of the Township of Mahoning, Montour County, Pennsylvania.

MAHONING TOWNSHIP

Attest: Christine DeLong
Secretary

By: Christine DeLong
Chairperson

TOWNSHIP SEAL

William G. Earlston
Supervisor

Ronald Miller
Supervisor

