

**TOWNSHIP OF UPPER BERN
COUNTY OF BERKS
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO.: 1161-2021

**AN ORDINANCE OF UPPER BERN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA
PROVIDING FOR THE INSPECTION AND POSSIBLE REPLACEMENT OF
PRIVATE SEWER SERVICE LATERALS WHEN:**

- A. UPON TRANSFER OF TITLE OF THE PROPERTY TO WHICH THE
PRIVATE SEWER LATERAL IS CONNECTED (Article IV);**
- B. THE CONVEYANCE LINE TO WHICH THE PRIVATE SEWER SERVICE
LATERAL IS CONNECTED, IS REPLACED OR REPAIRED (Article V);**
- C. UPON INSPECTION OF THE SANITARY SEWER SYSTEM BY UPPER
BERN TOWNSHIP PERSONNEL OR, THEIR AUTHORIZED AGENT(S)
(Article VI);**

**ALL FOR THE PURPOSE OF ELIMINATING THE INTRODUCTION OF
PROHIBITED WATERS INTO SAID SANITARY SEWER SYSTEM; AND PROVIDING
PENALTIES FOR VIOLATION THEREOF.**

WHEREAS, Upper Bern Township ("Township") has constructed a sanitary sewer collector system for the use and benefit of the residents of the Township; and

WHEREAS, the Township has adopted restrictions on groundwater and storm water being introduced into the Township's sanitary sewer system; and

WHEREAS, the Township has received information from its engineer that excessive storm water inflow exists within parts of the sanitary sewer system (Publicly Owned Treatment Works -- "POTW"); and

WHEREAS, the Township concludes that a substantial amount of the storm water inflow which exists in the POTW is caused by the advanced age and poor condition of the private sewer service laterals connected to the POTW; and

WHEREAS, the Township is a party to a Consent Order with the Pennsylvania Department of Environmental Protection ("PA DEP") requiring the Township to reduce the excessive inflow and infiltration in the POTW; and

WHEREAS, the Township represented to the PA DEP in the Consent Order that the Township would maintain a program to continue to reduce the increased storm water inflow and infiltration; and

WHEREAS, the Township concludes that the storm water inflow will continue to cause excessive sanitary sewer flows which may create and continue to create a direct danger to the health, safety, and welfare of the Township residents; and

WHEREAS, the Township concludes that the excessive storm water inflow which has existed, and continues to exist has resulted in, and will continue to result in increased costs for treatment and maintenance of the POTW; and

WHEREAS, the Township is charged and obligated to enforce its Ordinances and to protect the health, safety, and welfare of its residents; and

WHEREAS, the Township concludes that it is in the best interest of the residents of the Township to enact a comprehensive and systematic compliance and enforcement procedure to govern the conduct of all users of the system and to require maintenance of the private sewer service laterals connected to the POTW; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Upper Bern Township Board of Supervisors, as follows:

ARTICLE I. Recitals. The above recitals shall form a part of this Ordinance as though the same were set forth herein at length.

ARTICLE II. Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

“Township” shall mean Upper Bern Township.

“Supervisors” shall mean the Upper Bern Township Board of Supervisors.

“Compliance” shall, whenever necessary, mean compliance with the provisions of the Ordinance set forth herein, and any amendments thereto, as well as Ordinance 89-2007 and all rules, regulations, and resolutions of the Township.

“Employees” shall, whenever necessary, mean and include such employees and designated representatives, consultants or officials of Upper Bern Township, or the Township shall, from time to time, designate and utilize in the making of the inspection and/or tests hereafter described in carrying out the duties as prescribed herein to be performed on behalf of the Township and/or the Township.

“Notice of Inspection” shall mean advising when inspections and tests of a Private Sewer Service Lateral should be performed by the Township.

“Notice of Non-Compliance” shall mean advising when inspections and tests of a Private Sewer Service Lateral indicate that it is not in Compliance and repairs and/or replacement is required.

“Private Sewer Service Lateral” shall mean the sewer pipe extending from a building to the clean-out, or if no clean-out exists to the curb line or cartway.

“System” shall mean all facilities for collecting, pumping, and disposing of sanitary sewage, which are owned by the Township within the sanitary sewer service area of Upper Bern Township.

“Sump Pump” shall mean any pump connected to the Private Sewer Service Lateral, or to any lateral connected to the Private Sewer Service Lateral that is being used to pump ground/storm water into the System.

“Transfer” shall mean the transfer of title to real estate when sale or gift is intended and excluding transfers that occur for the following reasons:

- a. Conversion: A change in an entity’s form or organization, place of organization or name;
- b. Financing Transaction: When realty is transferred by the debtor solely for the purpose of serving as security for the payment of a debt; or when no sale or debt is intended;
- c. Living Trust is established;
- d. Confirmatory Deeds.

“User” shall mean the owner, lessee, or occupant of the property on which the buildings and/or appurtenances that are connected to the system are located.

Throughout this Ordinance, references to the singular shall include the plural, and vice versa, wherever required by the context.

ARTICLE III. Inspection Required Upon Transfer of Properties.

A. The Seller of any property (residential or commercial) located in the Township, which is connected to the System shall be required to retain the services of a master plumber or utility contractor for the purposes of conducting an inspection of the property to ensure Compliance with the provisions of this Ordinance; Ordinance 89-2007; as well as the Township’s rules, regulations, and resolutions. Said inspections shall also require a video inspection of the sanitary sewer lateral from the residence to the connection to the System to ensure Compliance. Following the inspection, the master plumber or utility contractor shall submit to the Township a certified report of the results of the inspection.

B. Should the lateral be found to be defective, based upon the Township’s or Township’s rules, regulations, and resolutions and/or sound engineering practice, the lateral pipe shall be replaced or realigned. In the sole discretion of the Township, limited permission for spot and/or minor repairs and maintenance may be granted. The lateral replacement/realigning/spot

repair shall be performed by a master plumber or utility contractor in accordance with Ordinance 89-2007 requirements as well as the Township's rules, regulations, and resolutions.

C. In the event that any transfer of title occurs without an inspection having been conducted and without the Seller obtaining a certified report, the Buyer or Purchaser of the property shall be responsible for having the aforementioned inspection conducted and for the submission of the certified result to the Township, and Buyer or Purchaser shall be responsible for rectifying any non-compliance found from the inspection, unless done so by the Seller.

D. This Article shall not apply to transfer of newly constructed properties.

E. The Township upon payment of any application and inspection fee and upon the Township's receipt and approval of the certification set forth in Subparagraph A above, including a copy of the televised video inspection, the certification specifically certifying that there is no inflow and/or infiltration into the Private Sewer Service Lateral, nor any illegal connections and that the clean-out vent is capped and not damaged; the Township shall issue a Private Sewer Service Lateral inspection permit to the Seller who shall deliver said permit to the Buyer or Purchaser of the property at the time of the sale or conveyance.

F. In the event that the property owner fails to replace the private sewer service lateral as required by Subparagraph B above, the Township shall be authorized as permitted by law to go onto the property and replace the Private Sewer Service Lateral and charge the property owner for the cost and expenses incurred by the Township to replace the Private Sewer Service Lateral. In the event that satisfactory payment arrangements are not agreed upon between the Township and property owner, the Township may file a municipal lien against the property pursuant to Pennsylvania's Municipal Claims Act and/or pursue other legal remedies for the collection of same.

G. The property owner shall permit the designated employees or agents of the Township access during reasonable hours of the day to all parts of the property to make necessary inspections and observations.

ARTICLE IV. Inspection Required When Township Intends to Repair or Replace Conveyance Line

A. All Users of the System shall upon Notice of Inspection from the Township that it intends to replace or repair a sewer conveyance line to which the User's Private Sewer Service Lateral is connected, shall make an appointment, within thirty (30) days of being notified, with the Township to allow the User's Private Sewer Service Lateral to be inspected in accordance with the terms and conditions set forth herein; in accordance with the terms and conditions of the Ordinances of the Township and the standard specifications governing connection to and use of the System including, but not limited to, the requirements set forth herein; the requirements of Ordinance 89-2007; as well as the rules, regulations, and resolutions of the Township.

B. If upon completion of an inspection, the lateral is found to be defective, based upon the Township's rules, specifications, regulations, and resolutions and/or sound engineering practice, the lateral pipe shall be replaced or realigned. At the sole discretion of the Township, limited permission for spot and/or minor repairs and maintenance may be granted. The pipe replacement/realigning/spot repair shall be performed by a master plumber or utility contractor in accordance with Ordinance 89-2007; well as the rules, regulations, and resolutions of the Township.

C. The purpose of the inspection required by this Ordinance is to locate any inflow and infiltration into the Private Sewer Service Lateral; to make sure that there are not any holes or damage in or to the Private Sewer Service Lateral; to verify that all clean-outs and/or vents are properly capped and not damaged; and to identify any clay or older Private Sewer Service Laterals.

D. The Township shall not charge the User for the inspection required by this Article IV.

E. In the event that the property owner fails to replace the Private Sewer Service Lateral as required by Subparagraph B above, the Township shall be authorized as permitted by law to go onto the property and replace the Private Sewer Service Lateral and charge the property owner for the cost and expenses incurred by the Township to replace the Private Sewer Service Lateral. In the event that satisfactory payment arrangements are not agreed upon between the Township and property owner, the Township may file a municipal lien against the property pursuant to Pennsylvania's Municipal Claims Act and/or pursue other legal remedies for the collection of same.

F. The property owner shall permit the designated employees or agents of the Township access during reasonable hours of the day to all parts of the property to make necessary inspections and observations.

ARTICLE V. Inspection required when the Township identifies problem laterals during routine inspection of the sanitary sewer system.

A. All Users of the System shall upon a Notice of Inspection from the Township that it intends to perform inspections of the System in their area shall make an appointment, within thirty (30) days of being notified, with the Township to allow the User's Private Sewer Service Lateral to be inspected in accordance with the terms and conditions of the Ordinances of the Township and the standard specifications governing connection to and use of the System including, but not limited to, the requirements as set forth herein; Ordinance 89-2007; as well as the rules, regulations, and resolutions of the Township.

B. If upon completion of an inspection the lateral is found to be defective, based upon the Township's rules, specifications, regulations, and resolutions and/or sound engineering

practice, the lateral pipe shall be replaced or realigned. In the sole discretion of the Township, limited permission for spot and/or minor repairs and maintenance may be granted. The pipe replacement/realigning/spot repair shall be performed by a master plumber or utility contractor in accordance with Ordinance 89-2007; as well as the rules, regulations, and resolutions of the Township.

C. The purpose of the inspection required by this Ordinance is to locate any inflow and infiltration into the Private Sewer Service Lateral; to make sure that there are not any holes or damage in or to the Private Sewer Service Lateral; to verify that all clean-outs and/or vents are properly capped and not damaged; and to identify any clay or older Private Sewer Service Laterals.

D. The Township shall not charge the User for the inspection required by this Article V.

E. In the event that the property owner fails to replace the Private Sewer Service Lateral as required by Subparagraph B above, the Township shall be authorized as permitted by law to go onto the property and replace the Private Sewer Service Lateral and charge the property owner for the cost and expenses incurred by the Township to replace the private sewer service lateral. In the event that satisfactory payment arrangements are not agreed upon between the Township and property owner, the Township may file a municipal lien against the property pursuant to Pennsylvania's Municipal Claims Act and/or pursue other legal remedies for the collection of same.

F. The property owner shall permit the designated employees or agents of the Township access during reasonable hours of the day to all parts of the property to make necessary inspections and observations.

ARTICLE VI. Maintenance, Repair, and Replacement of Clean-outs.

At all times, it shall be the responsibility of the User to maintain, repair, and replace all the clean-outs along his/her Private Sewer Service Lateral, including the clean-out at the right-of-way, or curb line, or the edge of the pavement, whichever applies.

ARTICLE VII. Non-Compliance

A. In the event a User refuses to comply with any of the terms or conditions of Article III through Article VI, above for a period of sixty (60) days after a Notice of Non-Compliance, a surcharge of Twenty-Five Dollars (\$25.00) per month shall be imposed in addition to all other sewer charges authorized and imposed under any applicable Resolutions of the Township, commencing at the next billing period following the date of such failure to comply.

B. In the event a User complies with the inspection requirements of Article III through Article VI, above, and the Township determines that the buildings and/or appurtenances of said User are not in compliance, then and in such event, the Township by its designated

employee shall provide a Notice of Non-Compliance to the User, who shall be required to commence compliance with the applicable provisions set forth herein; Ordinance 89-2007; as well as the rules, regulations, and resolutions of the Township, within thirty (30) days of the date of the Notice.

C. The surcharge referred to herein in Subsection A shall be removed only upon the following conditions:

1. The User utilizing the System executes a Grant of Inspection to the Township;
2. The Township or its authorized agents inspects and/or performs tests on the building and/or appurtenances connected to the System and determines that the buildings and/or appurtenances connected to the System are Compliant; or
3. Under any of these conditions, surcharges will continue to be billed to the User until the date when the buildings and/or appurtenances in question are determined to be in compliance.

D. In the event a User is found to be in compliance and subsequent inspections and/or tests determine that non-compliance now exists, the terms and provisions of Article VII, shall be applicable, except that in addition to the surcharge being charged in accordance with Article VII Paragraph A, if any, the User shall also be liable for the payment of a sum equal to the number of the months since the original determination of Compliance was made, multiplied by the monthly surcharge amount provided for in Article VII, Paragraph A, for knowingly, willfully and/or intentionally creating or permitting such violation to commence and continue. A Non-Compliance re-occurs when a reconnection of a sump pump or other prohibited connection is discovered with the performance of a subsequent inspection.

ARTICLE VIII. Penalty for Non-Compliance.

In the event a user is found to be in a state of Non-Compliance of a second or subsequent time, then the User shall be liable for the payment of a sum equal to One Thousand Dollars (\$1,000.00) per day, plus an amount equal to the sum of the months since the original Non-Compliance was corrected (and if never corrected, from the date of such Non-Compliance determination), multiplied by the monthly surcharge amount provided for in Article VII, Paragraphs A, for knowingly, willfully, and/or intentionally permitting such violation to commence and continue.

ARTICLE IX. Violations.

Any User violating any of the provisions of this Ordinance shall be liable to the Township and/or the Township for any expenses, costs, and fees including, but not limited to, reasonable attorney's fees, occasioned or caused to the Township by reason of seeking enforcement of such Ordinance against the violator, as well as for any losses or damages occasioned or caused to the Township and/or the Township by reason of such violation.

ARTICLE X. Remedies

The Township shall have full power and Township to invoke any legal, equitable, or special remedy for the enforcement of this Ordinance.

ARTICLE XI. Supplemental Ordinance.

This Ordinance shall be deemed supplemental to all other Ordinances and provisions thereof for enforcement and compliance purposes, and shall not be deemed to amend or rescind said other Ordinances and provisions; further that any fines, fees, charges, or penalties levied or imposed pursuant to this Ordinance shall be in addition to any fines, fees, charges, or penalties levied or imposed pursuant to all other Ordinances and provisions thereof.

ARTICLE XII. Several Provisions.

The provisions of this Ordinance shall be deemed severable, and should any section or part hereof be deemed invalid or unenforceable by the Courts of the Commonwealth of Pennsylvania, such section, clause, sentence, or provision shall be deemed stricken and the invalid or unenforceable part shall not affect the validity or enforceability of any other part or parts of this Ordinance which can be given effect without such part or parts as may be so deemed invalid or unenforceable.

ARTICLE XIII. Effective Date.

This Ordinance shall become effective upon adoption.

ORDAINED AND ENACTED this 9th day of December, 2021, by a vote of 3
Yes No Abstained Absent.

UPPER BERN TOWNSHIP BOARD OF SUPERVISORS

By: Nancy A. Hartman
Nancy Hartman, Chairman

By: Gloria Grim
Gloria Grim, Vice Chairman

By: Mike Fisher
Mike Fisher, Supervisor

ATTEST:

Ben Shawall
Secretary
Attest:

