

Borough of Lilly

LILLY, PENNSYLVANIA

Ordinance No. 2012-1

An Ordinance of the Borough of Lilly Requiring Testing of all Real Property with Structures Located thereon to Determine if Illegal Storm or Surface Water is Connected to the Sanitary Sewer and to Set Forth Regulations Related thereto and Prescribing Penalties for Violations thereof.

WHEREAS, the Borough of Lilly (the "Municipality") believes the elimination of surface storm water inflow to the sanitary sewer system to be necessary to the health and welfare of its residents; and

WHEREAS, the Municipality, as a result of excessive flows monitored in the sanitary sewer system during and after rainfall events has reason to believe that certain residential and commercial properties within the Municipality have storm water or surface water connections to the sanitary sewer system; and

WHEREAS, in the interest of promoting the health and welfare of its residents, the Municipality desires to institute and enforce a sewer use ordinance requiring lateral testing of all structures located on property within the Municipality to determine whether surface storm water drains to the sanitary sewer system.

NOW THEREFORE, the Council of the Borough of Lilly hereby **ORDAINS AND ENACTS** as follows:

Section 1. Definitions.

(a) **Applicant:** A person applying for a Certificate of Compliance or Temporary Certificate of Compliance.

(b) **Cash Security:** Cash, certified check, or treasure's check.

(c) **Lateral Testing:** Any commonly accepted method of testing whereby dye is introduced into the storm, surface or subsurface water connection system and downspouts of structures or improvements to real property to determine if surface storm water is entering into the sanitary sewer system.

(d) **Improved and Sewered Real Property:** Real property on which any building, driveway or parking pad, other surface or subsurface structure or improvement has been constructed, installed or erected, where the real property or any improvement on the real property is connected to the municipal sewer system.

(e) **Ordinance Compliance Officer:** The Municipality authorized representative appointed by the Governing Body, from time to time, whose duty it shall be to administer this Ordinance unless such duty is expressly conferred by this Ordinance upon another Municipality, official or entity. Unless the Governing Body by resolution provides otherwise, the Municipality Secretary shall be designated as Ordinance Compliance Officers under this Ordinance.

(f) **Person:** Any natural person, association, partnership, corporation, syndicate, institution, agency, authority, or other entity recognized by law as the subject of rights and duties.

(g) **Sanitary Sewer System:** The sanitary sewer lines and related facilities maintained and operated by the Municipality's designated sewer service provider.

(h) **Sell or Transfer:** The sale, transfer, or assignment of any interest in real property; provided, however, that a refinancing of real property, without a conveyance, is not a sale or transfer under this Ordinance.

(i) **Surface Storm Water:** Surface water and ground water, including but not limited to roof and driveway drainage, basement seepage.

Section 2. Unlawful Connections. It shall be unlawful for any person to connect any rain leader, roof drain, downspout, gutter, parking lot drain, driveway drain, interior or exterior sump, French drain, spring or other collector or source of surface storm water, including but not limited to the fresh air vent of the improved and sewered property's sanitary sewer, to the sanitary sewer system.

Section 3. Repair of Private Sewer Facilities. Persons owning property within the Municipality are required to maintain all private sanitary sewer laterals and sanitary sewer service connections in good repair.

Section 4. Lateral Testing by Municipality. The Ordinance Compliance Officer, or other persons designated by the governing body by resolution, is authorized to initiate lateral testing or other testing or inspection within the Municipality for purposes of discovering or locating the inflow of surface storm water to the sanitary sewer system. The Ordinance Compliance Officer is authorized to retain the services of a qualified contractor to perform the lateral testing or other testing or inspection. Persons owning property within the Municipality

are required to grant access to the Ordinance Compliance Officer and/or the lateral testing contractor and to permit lateral testing or other testing or inspection. It is unlawful for any person to refuse access to property for purposes of lateral testing or other testing or inspection.

Section 5. Notices to Property Owners. In the event the Ordinance Compliance Officer identifies any illegal connections or leaking, deteriorating or poorly constructed private sanitary sewer lateral and/or sanitary sewer service connections, the Ordinance Compliance Officer shall give written notice of same to the property owner that such illegal connections be eliminated and/or services connections be, at the property owner's expense, repaired, replaced, or rehabilitated within thirty (30) days of the date of the notice. If the condition does not create a health hazard, the Ordinance Compliance Officer, upon request of the property owner, may extend the deadline to sixty (60) days from the date of the notice.

Section 6. Proof of Compliance on Sale or Transfer. It shall be unlawful for any person to sell or transfer improved and sewered real property located within the Municipality without having obtained and delivered to the buyer or transferee, at or prior to closing or transfer, a Certificate of Compliance or Temporary Certificate of Compliance for the property being sold or transferred.

Section 7. Application for Certificate of Compliance.

(a) At least 21 days prior to the date of closing or transfer of any improved real property located within the Municipality, the seller or transferor or its agent shall submit to the Ordinance Compliance Officer an Application for Certificate of Compliance, completed as required by Section 7(b) below. The Certificate of Compliance form shall be available upon request from the Municipality Secretary. The fee for filing the completed Application for Certificate of Compliance shall be established by the Governing Body from time to time by resolution.

(b) Prior to the sale or transfer of any improved real property located within the Municipality, the seller or transferor shall have a lateral test of the property performed by a licensed plumber, or other qualified contractor approved in advance by the Compliance Officer, to perform such tests or by such other person designated or approved by the Municipality. Upon completion of the lateral test, the person who performed the test shall complete the appropriate section of the Application for Certificate of Compliance, confirming that the property has been lateral tested and certifying the results of the test.

Section 8. Issuance of Certificate of Compliance.

(a) If the Application for Certificate of Compliance, properly completed and filed with the Ordinance Compliance Officer with the designated filing fee, indicates that there are

no connections of surface storm water to the sanitary sewer system, then the Ordinance Compliance Officer shall issue the Certificate of Compliance within ten (10) days of application therefore.

(b) If the lateral test reveals the existence of one or more surface storm water connections to the sanitary sewer system, the Ordinance Compliance Officer shall not issue the Certificate of Compliance until the connections have been removed and a plumber licensed by the City of Johnstown, or other qualified contractor approved in advance by the Compliance Officer, has certified that there is no connection of surface storm water to the sanitary sewer system from the property to be sold or transferred.

Section 9. Temporary Certificate of Compliance.

(a) When a surface storm water connection to the sanitary sewer system is discovered and the necessary work to remove the connection would require a length of time such as to create a hardship for the seller or applicant, the seller or applicant may apply to the Ordinance Compliance Officer for a Temporary Certificate of Compliance. The seller or applicant must submit the following with the properly completed Application:

(i) A bona fide executed contract with a registered and licensed plumber, or other qualified contractor approved in advance by the Compliance Officer, requiring the plumber to complete the remedial work necessary to the removal of the connections of surface storm water to the sanitary sewer system and granting the Municipality the right and power to enforce the contract.

(ii) Cash security in an amount equal to one hundred ten (110%) percent of the contract described in Subsection (a)(i) above.

(iii) The agreement of the purchaser or transferee to be responsible for all cost overruns related to the remedial work, together with a license from the purchaser or transferee to the Municipality, its agents, contractors, and employees, to enter upon the property to complete the remedial work in case of default by the contractor or the applicant.

(iv) The filing fee established by the governing body from time to time by resolution.

(b) When lateral testing cannot be performed because of weather conditions, the seller or applicant may apply to the Ordinance Compliance Officer for a Temporary Certificate of Compliance. The seller or applicant must submit the following with the properly completed Application:

(i) Cash security in the amount of One Thousand (\$1,000.00) Dollars.

(ii) The written, signed agreement of the Purchaser or transferee to correct, at the Purchaser's or Transferee's sole expense, any surface storm water connections to the sanitary sewer systems disclosed by the subsequent lateral test, together with a license from the purchaser or transferee to the Municipality, its agents, contractors, and employees, to enter upon the property to conduct the lateral testing should the applicant fail to do so. Nothing in this subsection 9(b) shall prohibit any purchaser or transferee from requiring the applicant to reimburse the purchaser or transferee for any costs incurred in connection with such remedial work; provided, however, that primary responsibility for the remedial work and all costs thereof shall run with land, and no such agreement shall effect the Municipality's enforcement powers or excuse the current owner of the property from performance.

(iii) The filing fee established by the Municipality from time to time by resolution.

(c) The Ordinance Compliance Officer may reject the Application for Temporary Certificate of Compliance whenever, in his or her sole judgment, the conditions defined by this Section 6 do not exist or the submissions required by this Section 6 have not been made.

(d) The Temporary Certificate of Compliance shall be effective for sixty (60) days, and the expiration date of the Temporary Certificate of Compliance shall be noted on the Certificate. If, upon the expiration of the Temporary Certificate of Compliance, the seller or applicant has not applied for and received a Certificate of Compliance, as provided for in Sections 4 and 5 of this Ordinance, the cash security shall be forfeited, and the Municipality may use the funds to complete the remedial work for the lateral testing.

(e) The Application for Temporary Certificate of Compliance form shall be available upon request from the Municipal Secretary.

Section 10. Municipal Lien and Tax Verification Letters. A request to the Municipality for a municipal lien letter or tax verification letter must be accompanied by a valid Certificate of Compliance or Temporary Certificate of Compliance and by the appropriate fee, which shall be established by the Municipality Board of Supervisors from time to time by resolution. The Municipality shall issue the municipal lien letter or tax verification letter within seven (7) days of receipt of the appropriately documented request and the applicable fee.

Section 11. Expiration of Certificate of Compliance. A Certificate of Compliance issued under this Ordinance shall be valid for a period of (1) year from the date of issuance.

Section 12. Regulations. The Ordinance Compliance Officer is hereby empowered to make reasonable rules and regulations for the operation and enforcement of this Ordinance, including but not limited to: establishing the form of applications, acknowledgments and certification; and limiting the time of year in which Temporary Certificate of Compliance is available for reasons of weather.

Section 13. Conflict with General Police Powers. Nothing in this Ordinance shall limit in any fashion whatsoever the Municipality's right to enforce its ordinances or the laws of the Commonwealth. Nothing in this Ordinance shall be a defense to any citation issued by any municipal corporation or the Commonwealth pursuant to any other law or ordinance.

Section 14. Penalties. Any person who shall fail, neglect or refuse to comply with any of the terms or provisions of this Ordinance, shall be subject to a penalty of not more than Six Hundred Dollars (\$600.00) Dollars for each Violation. Once a person is notified of a violation of this Ordinance, each day that such violation occurs or continues shall constitute a separate violation. In addition to and not in lieu of the foregoing, the Municipality or the public sewage provider may seek equitable relief to compel compliance with this Ordinance.

Section 15. Severability. In the event that any section or provision of this Ordinance is declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

Section 16. Repealer. Any other Ordinance provisions or regulation of the Municipality inconsistent with any of the provisions of this Ordinance is hereby repealed to the extent of the inconsistency only.

ORDAINED AND ENACTED this tenth day of July, 2012

BOROUGH OF LILLY

By: Richard R. Sweeney
Richard R. Sweeney - *President*

Attest: Claudine M. Falger (Seal)
Claudine M. Falger - *Secretary*

APPROVED, this 11th day of July, 2012

Patrick R. Podrasky
Patrick Podrasky - *Mayor*