

NORTHUMBERLAND BOROUGH ORDINANCE NO. 2007-3

An Ordinance supplementing the Northumberland Borough Code, by adding "Chapter 46: Illegal Storm/Surface/Ground Water Connections", 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 Northumberland 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 Borough has determined it is reasonable and necessary to reduce the inflow of storm/surface ground water into the Borough's sanitary sewer system (hereinafter "Sanitary Sewer System"); and

WHEREAS, the Borough 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 Borough; and

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

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

NOW, THEREFORE, Be it resolved, and it is hereby resolved, by the Northumberland Borough Council as follows:

The Borough Code is hereby supplemented by adding the following Chapter:

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CHAPTER 46: ILLEGAL STORM/SURFACE/GROUND WATER CONNECTIONS

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§46.01 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 Borough.
- b. Borough: The Borough of Northumberland, Northumberland County, Pennsylvania.
- c. Evidence of Compliance Certificate: A certificate from the NSA 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 Borough'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 NSA to determine if any storm/surface/ground water is entering the Sanitary Sewer System.
- f. Inspector: A representative of the Northumberland Sewer Authority.
- g. NSA: The Northumberland Sewer 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 Borough operated by the NSA.

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 NSA issued pursuant to §46.06 of this Ordinance.

§46.02 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 Borough 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 NSA 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 Borough 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.

§46.03 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 Borough's separate Storm Sewer System is subject to the prior approval of the Borough and the NSA. 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 NSA, for NSA's

approval, on a NSA 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 NSA Plan Form.

§46.04 SALES OF REAL PROPERTY/EVIDENCE OF COMPLIANCE CERTIFICATE.

a. Any Person Selling Real Property (Applicant) located within the Borough, whose real property is connected to the Sanitary Sewer System, shall have said real property inspected by a NSA Inspector. Said Person shall arrange for an Inspection by obtaining an Application for Evidence of Compliance Certificate (Application) from the NSA, submitting the completed Application to the NSA, and paying such fee(s) and cost(s) as required by the NSA. 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 NSA shall issue the Evidence of Compliance Certificate promptly after the NSA'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 NSA's approval, on a NSA 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 NSA will approve. After the corrective action has been taken, the Applicant shall submit a report thereof to the NSA on the NSA's Corrective Action Report form (Report Form) and pay any additional fee(s) and cost(s) required by the NSA. 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 NSA shall issue the Evidence of Compliance Certificate promptly after the NSA'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 NSA shall reject the Application as per §46.07 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.

§46.05 PURCHASE OF REAL PROPERTY/EVIDENCE OF COMPLIANCE CERTIFICATE.

a. Any Person Purchasing Real Property (Purchaser) located within the Borough 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 NSA Inspector. Said Person shall arrange for an Inspection by obtaining an Application for Evidence of Compliance Certificate, (Application) from the NSA, submitting the completed Application to the NSA and paying such fee(s) and cost(s) as required by the NSA. 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 NSA shall issue the Evidence of Compliance Certificate promptly after the NSA'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 NSA's approval, on a NSA 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 NSA will approve. After the corrective action has been taken, the Applicant shall submit a report thereof to the NSA on the NSA's Corrective Action Report form. (Report Form) and pay any additional fee(s) and cost(s) required by the NSA. 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 NSA shall issue the Evidence of Compliance Certificate promptly after the NSA'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 NSA shall reject the Application as per §46.07 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.

§46.06 TEMPORARY EVIDENCE OF COMPLIANCE CERTIFICATE.

a. In the event that an Illegal Connection is discovered pursuant to §46.04 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 NSA for a Temporary Evidence of Compliance Certificate on a NSA-approved form. The NSA may issue a Temporary Evidence of Compliance Certificate upon the payment of such fee(s) and cost(s) as the NSA may from time to time establish, and provided there is strict compliance with all the following conditions:

(1) The NSA 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 NSA 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 NSA will approve;

(2) Cash security (hereinafter "Security") in the amount of 120% of the price of the Contract is deposited with the NSA 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 NSA and immediately deposited with the NSA. The Security shall be held by the NSA 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 NSA 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 NSA 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 NSA 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 NSA 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 NSA 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 NSA shall be forfeited and the NSA may use said Security to have the required remedial work completed.

§46.07 REJECTION OF APPLICATION.

The NSA 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.

§46.08 NSA RESOLUTIONS.

The NSA 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 NSA under and pursuant to §46.06 above.

§46.09 ACCESS AND INSPECTION.

a. The NSA is authorized to enter real properties at reasonable times to perform Inspections to determine compliance with this Ordinance unless the owner and/or possessor specifically refuses access.

b. 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 NSA, make the necessary arrangements to allow access by representatives of the NSA.

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

d. 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 NSA 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.

e. The NSA 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.

f. If the NSA has been refused access to any part of a property on which an Illegal Connection is suspected, and the NSA 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 NSA may seek issuance of a search warrant from any court of competent jurisdiction.

§46.10 PENALTIES.

[As passed 12/18/2001 as part of Ordinance 2001-13, all penalties for this and subsequent parts of the Borough Code are determined by Council resolution]

§46.11 NOTICE OF NON-COMPLIANCE/VIOLATION.

Whenever the NSA finds that a non-compliance or violation of this Ordinance has occurred, the NSA 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 mail sent to the address of the property or at such other address for the owner and/or possessor as maintained in the Borough or County of Northumberland 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 §46.03, of this Ordinance; and
- (3) That the Person whose discharges, practices, or operations are in non-compliance/violation of this Chapter shall cease and desist from such non-compliance/violations.

§46.12 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.

§46.13 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 NSA 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 NSA 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 NSA of a Contract for performance of the correction work, or other document satisfactory to the NSA showing good faith commencement of correction of the non-compliance/violation, abatement by the NSA 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 NSA.

§46.14 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 NSA 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 NSA shall constitute a recordable lien against the property.

§46.15 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 NSA may seek abatement thereof by injunctive or other equitable relief as provided by law.

§46.16 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 NSA may seek cumulative remedies. The NSA may recover attorney's fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

§46.17 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.

§46.18 EFFECTIVE DATE.

This Ordinance shall take effect within _____ (____) days of the date of enactment, 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 ____ day of _____, _____ by Borough Council of the Borough of Northumberland, Northumberland County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF NORTHUMBERLAND
Northumberland County, Pennsylvania

Attest: _____
Secretary

By: _____
President
Borough Council

[BOROUGH SEAL]

Examined and approved as an Ordinance this ____ day of _____, 200_.

Mayor

BOROUGH OF NORTHUMBERLAND

RESOLUTION NO. _____

WHEREAS, the Borough of Northumberland is a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania; and,

WHEREAS, pursuant to said laws of the Commonwealth the Borough is authorized to fix, alter, and charge penalties for violations of its ordinances;

NOW THEREFORE, BE IT RESOLVED, AND IT IS HEREBY RESOLVED by the Council of the Borough that the following penalties be, and hereby are, assessed for violations of Chapter 46: Illegal Storm/Surface/Ground Water Connections

a. Any Person upon conviction of any of the following violations shall be subject to a penalty of not less than One Hundred Dollars (\$100.00) up to the maximum amount of Three Hundred Dollars (\$300.00), and a penalty of Twenty-Five Dollars (\$25.00) for every calendar day on which the violation continues after the date for compliance set forth in the written Notice of Non-compliance/Violation of this Ordinance:

(1) A Person found to be in violation of sub-section a. of §46.02 of this Ordinance who fails to comply with the remediation procedures set forth in this Ordinance

(2) A Person found to be in non-compliance with the provisions of sub-section b. of §46.02 of this Ordinance and who fails to comply with the remediation procedures set forth in this Ordinance

(3) A Person found to be in non-compliance with the provisions of sub-section c. of §46.02 of this Ordinance and who fails to comply with the remediation procedures set forth in this Ordinance

(4) A Person found to be in violation of §46.09 of this Ordinance

(5) A Person found to be in violation of §46.13 of this Ordinance

b. Any Person violating sub-section a. of §46.02 of this Ordinance having been previously found to have Illegal Connections to the Sanitary Sewer System shall upon conviction be subject to a penalty of not less than Three Hundred Dollars (\$300.00), and a penalty of Twenty-Five Dollars (\$25.00) for every calendar day on which the violation continues after the date for compliance set forth in the written Notice of Non-Compliance/Violation of this Ordinance.

Adopted this _____ day of _____, 2007

Borough Secretary

President