

EAST BUTLER BOROUGH
ORDINANCE NO. 157

AN ORDINANCE AMENDING AND RESTATING ORDINANCE #154 OF THE BOROUGH OF EAST BUTLER (BOROUGH), COMMONWEALTH OF PENNSYLVANIA; ESTABLISHING A REQUIREMENT FOR CERTIFICATION OF SANITARY SEWER STATUS WITH RESPECT TO ILLEGAL STORM WATER AND SURFACE WATER CONNECTIONS AND DETERIORATING CONNECTIONS TO THE BUTLER AREA SEWER AUTHORITY (BASA) SANITARY SEWER SYSTEM PRIOR TO SALE, TRANSFER, MORTGAGING OR REFINANCING OF ANY REAL ESTATE WITHIN BOROUGH AND AS A CONDITION FOR THE ISSUANCE OF MUNICIPAL LIEN LETTERS BY BASA; PROVIDING FOR NOTICE TO OWNERS OF PROPERTIES SITUATE WITHIN THE BOROUGH TO REPAIR DETERIORATING SEWER LATERALS AND LATERALS IN NEED OF REPAIR, AND WHICH HAVE ILLEGAL STORM WATER AND SURFACE WATER CONNECTIONS OR INFILTRATION OF GROUND AND SUB-SURFACE WATER ENTERING THE SANITARY SEWER SYSTEM; AUTHORIZING PERIODIC TESTING AND INSPECTION AND IMPOSING PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE AND ANY OTHER SEWAGE-RELATED ORDINANCE ENFORCED BY BASA.

WHEREAS, the Borough previously enacted Ordinance #154; and

WHEREAS, the Borough desires to amend and restate said ordinance; and

WHEREAS, the Pennsylvania Sewage Facilities Act, 35 P.S. 750.1 *et seq.*, commonly known as Act 537, renders a municipality ultimately responsible to insure proper sewage disposal within its area; and

WHEREAS, the Borough is a party to the Water Pollution Control Agreement for Central Butler County of 1974 which designates BASA as the entity responsible for the maintenance and operation of the public sanitary sewer system in the Borough; and

WHEREAS, BASA has entered into a Consent Order and Agreement (COA) with the Department of Environmental Protection (DEP) to eliminate illegal sanitary sewer overflows caused by illegal storm water and surface water connections and infiltration of ground or sub-surface waters entering into the BASA sanitary sewer system; and

WHEREAS, the Corrective Action Plan (CAP) submitted by BASA to DEP, and approved by DEP, requires BASA to make or cause to be made such inspections and tests as may be necessary to carry out the provisions of the CAP to eliminate illegal storm water and surface water and infiltration of ground or sub-surface waters from entering into the BASA sanitary sewer system; and

WHEREAS, these illegal connections together with deteriorated, damaged or poorly constructed laterals and sewer service connections situated on and in property located within the Borough and other factors cause sanitary sewer overflows in and/or an overload to the BASA sanitary sewer system; and

WHEREAS, the Borough and BASA are desirous of eliminating illegal storm water and surface water connections and infiltration of ground or sub-surface waters from entering into the BASA sanitary sewer system; and

WHEREAS, the Borough ordinances and BASA rules and regulations prohibit all storm water, surface water, roof water connections and infiltration of ground or sub-surface waters from entering into the BASA sanitary sewer system; and

WHEREAS, BASA has determined that an efficient and effective means of eliminating illegal storm water and surface water connections and infiltration of ground or sub-surface waters from entering the BASA sewer system is through a program of televising, dye and/or smoke testing and inspection of the properties in the Borough at the time of sale, transfer, mortgaging or refinancing of such properties; and

WHEREAS, BASA has determined that an additional means of eliminating illegal storm sewer and surface water connections and infiltration of ground or sub-surface waters and identifying deteriorating sewer service connections to the BASA sanitary sewer system is through a program of inspection and reporting with respect to such sewer service connections in addition to all other means of elimination and enforcement of such connections currently available to BASA; and

WHEREAS, BASA has determined that in the interests of the health, safety and welfare of the residents of the Borough, it is necessary to implement a requirement of certification that there are no illegal storm water and surface water connections and infiltration of ground or sub-surface waters entering into the BASA sanitary sewer system prior to the sale, transfer, mortgaging or refinancing of such real estate within the Borough through inspection, testing and the issuance of a municipal lien letters and a Document of Certification by BASA; and

WHEREAS, BASA has determined that it is also necessary to implement a program of inspection and reporting by BASA with respect to illegal storm water or surface water connections to the sanitary sewers and infiltration of ground or sub-surface waters and deteriorating private laterals and sewer service connections; and that said program shall be in addition to, and not in substitution for, any and all other means of eliminating illegal storm water and infiltration of ground or sub-surface waters now available to BASA and/or the Borough; and

WHEREAS, BASA is and will be engaged in a program of repair, rehabilitation, maintenance and replacement of public sewer lines in various sections of the Borough and in the course of performing such work, BASA will be in a position to inspect and examine the condition of various sewage service connections situated on and in properties located with the Borough.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough of East Butler, Pennsylvania, that:

SECTION 1 DEFINITIONS

- (a) Televising, Dye and/or Smoke Testing and Inspection: Any commonly accepted method of testing and inspection wherein television camera, dye and/or smoke is introduced into the storm, surface, ground or sub-surface water collection system, down spouts or sanitary sewer lateral connection of real estate property to determine if any illegal storm water or surface water or infiltration of ground or sub-surface water is entering the sanitary sewer system.
- (b) Document of Certification, Evidence of Compliance: An official statement from BASA stating that there was, at the time of inspection and testing, no evidence of any illegal storm water and surface water connections and infiltration of ground or sub-surface waters on the specific property which is being sold, transferred, assigned, mortgaged or refinanced.
- (c) Illegal Storm Water and Surface Water Connections and Infiltration of Ground or Sub-surface Waters: The connection or presence of any basement seepage, storm water, surface water, drains, down spouts, roof drainage, or infiltration of ground or sub-surface waters into the sanitary sewer system.
- (d) Sewage. As defined under the Pennsylvania Sewage Facilities Act, 35 P.S. §750.2, any substance that contains any of the waste products or excrement or other discharge from the bodies of human beings or animals and any noxious or deleterious substances being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic supply or for recreation, or which constitutes pollution under the Act of June 22, 1937 (P.L. 1987, No. 394, also known as the Clean Streams Law, as amended, 35 P.S. §§ 691.1 et seq.).
- (e) Municipal Lien Letter: A written letter from officials of BASA concerning municipal liens for public sanitary sewer service and charges related thereto.
- (f) Person: Any person, syndicate, associate, partnership, firm, corporation, institution, agency, authority or other entity recognized by law as the subject of rights and duties.

**SECTION 2
DESIGNATION OF BASA
AS AGENTS FOR THE BOROUGH**

The Borough has, by Ordinance No. 146, designated BASA, its officers, employees and agents, as agents for the Borough to identify, report and require the disconnection of any illegal storm water and surface water connections and infiltration of ground or sub-surface waters, at any time prior to or from the effective date of this Ordinance, to the BASA sanitary sewer system, and for such purpose, BASA, its officers, employees and agents are authorized to enforce, consistent with this Ordinance and the Ordinances in effect within the Borough with respect to illegal storm water and surface water connections and infiltration of ground or sub-surface water to the sanitary sewers. BASA shall report to the Borough all enforcement measures undertaken within the Borough which are directed to an owner, lessee or occupier of realty situate in the Borough.

**SECTION 3
SALE, TRANSFER, MORTGAGING OR REFINANCING
WITHOUT EVIDENCE OF COMPLIANCE PROHIBITED**

That after the effective date set forth in Section 14 of this Ordinance, it shall be unlawful for any person:

(a) to sell or transfer any real estate within the Borough of East Butler on which a building or improvement exists which is connected to the BASA sanitary sewer system, when such sale or transfer is subject to taxation under the Realty Transfer Tax Act, 72 P.S. §§ 8101-C *et seq.*, and the corresponding regulations of the Department of Revenue; **OR**

(b) to mortgage or refinance any real estate within the Borough of East Butler on which a building or improvement exists which is connected to the BASA sanitary sewer system when such mortgage or refinancing is for the purpose of acquiring title to, or improving, modifying, repairing or rehabilitating any such real estate which requires a building permit under the Borough's Building Code,

without first delivering to the purchaser, transferee mortgagee or person or institution providing financing or refinancing, a Document of Certification from the proper officials of BASA.

**SECTION 4
EVIDENCE OF COMPLIANCE,
DOCUMENT OF CERTIFICATION, APPLICATION**

(a) Any person selling, transferring, mortgaging or refinancing real estate located within the Borough of Butler (hereinafter "Applicant") and subject to the requirements set forth in Section 3 above shall make application on a form furnished by the BASA at least fourteen (14) days before the date of sale, transfer, mortgaging or refinancing together with payment of a fee to be set by the Borough by resolution of Council. BASA shall schedule, within fourteen (14) days of receipt of the application, an inspection and televising, dye and/or smoke test on the property to be sold, transferred, mortgaged or refinanced, said televising, dye or smoke testing to involve the use of nontoxic, non-staining dye or smoke. BASA shall complete the appropriate portions on the form that the property lateral and facilities have been inspected, televised, dye and/or smoke tested, and certify the results of such test. In the event that there was, at the time of inspection and testing, no evidence of illegal connections, devices, or conditions causing or permitting storm or surface water, or infiltration of ground or sub-surface waters, to enter the sanitary sewer system, BASA shall issue a Document of Certification.

(b) When an illegal connection, device, or condition, which causes or permits storm or surface water or the infiltration of ground or sub-surface water to enter into the BASA sanitary sewer system is discovered by the means of the above-mentioned inspection and testing, no Document of Certification will be issued until the illegal connections, devices, or conditions are removed, inspected and approved by BASA. BASA shall have the authority to permit BASA and the Applicant, purchaser, transferee, mortgagor, mortgagee and any other appropriate person to enter into an escrow agreement to provide adequate assurance to BASA that the necessary actions will be taken to remove the illegal connection, device, or condition and to eliminate the illegal storm water and surface water connections and infiltration of ground or sub-surface waters from entering into the BASA sanitary sewer system.

(c) Testing will not be required when the application process reveals that a valid Document of Certification with respect to the specific tax parcel has been issued by BASA in accordance with this Ordinance within a period of five (5) years from the date of application.

**SECTION 5
INSPECTION OF SANITARY SEWER STATUS PRIOR TO SALE,
TRANSFER, MORTGAGE, OR REFINANCING OF REAL ESTATE**

In addition to the requirements set forth in Sections 3 and 4 of this Ordinance of the Borough, any person selling, transferring, mortgaging or refinancing real estate located within the Borough which is connected to the BASA sanitary sewer system must subject such person's real property to prior inspection, including inspection of interior premises of any building or residence, by

authorized representatives of BASA, between the hours of 7:00 a.m. and 9:00 p.m., prevailing time, and upon seven (7) days' written advance notice to the person selling such real estate, to determine the presence of any illegal connection, device (e.g., a sump pump), or condition, which causes or permits storm or surface water or the infiltration of ground or sub-surface water to enter into the BASA sanitary sewer system. Such person shall not be issued a Document of Certification until (a) such inspection and testing has been performed and has revealed no evidence that a connection, device, or condition exists which causes or permits storm or surface water or the infiltration of ground or sub-surface water to enter into the BASA sanitary sewer system and a follow-up inspection verifies that such connection, device or condition found to be previously in operation or existence has been disconnected and removed; or (b) an escrow agreement satisfactory to BASA has been executed and a follow-up inspection of the illegal connection, device or condition identified in such agreement verifies that such connection, device or condition found to be previously in operation or existence has been disconnected and removed.

**SECTION 6
WRITTEN REPORTS OF AND REQUIRED REPAIRS OF
DETERIORATING LATERALS AND SEWER SERVICE CONNECTIONS**

BASA is authorized in the course of its program of inspection and testing privately and publicly owned facilities within the Borough, when it identifies deteriorating sewer service laterals or other connections, devices or conditions which cause or permit inflow of storm and surface waters or infiltration of ground or sub-surface waters into the publicly owned facilities of the BASA sanitary sewer system, to provide written notice to the property owner or owners as to the condition of such laterals and sewer service connections, devices or conditions, together with a statement that such deteriorating laterals and sewer service connections, devices or conditions, must, at the property owner's expense, be promptly repaired, replaced or rehabilitated. A copy of all written reports of deteriorating laterals and sewer service connections shall be kept on file and shall be used in determining whether certificates can issue.

**SECTION 7
POWERS OF BASA**

(a) BASA its officers, employees and agents in performing its duties and authorized functions under this Ordinance, shall be empowered, subject to the requirements set forth below, to enter upon any private property at all reasonable times between the hours of 7:00 a.m. and 9:00 p.m., prevailing time, with seven (7) days' written advance notice to the owner, lessee or occupier (unless exigent circumstances require otherwise) for the purpose of obtaining information, conducting routine or systemic inspections, and televising, dye and/or smoke testing, and/or enforcing this Ordinance, and shall have only those powers expressly set forth in this Ordinance and in other Ordinances of the Borough or provided by law to perform its functions consistent with such Ordinances and laws. BASA shall first seek permission from the owner, lessee or occupier of such real estate to enter upon the property to obtain information, conduct inspections

and/or enforce this Ordinance. In the event that permission is not granted by the owner, lessee or occupier of the property, BASA shall make appropriate application to the Court of Common Pleas for authorization to enter upon the property for such purposes.

(b) In the event the owner of the premises is unable or fails to effect the necessary remedial work within the time permitted, including any extension thereof, or BASA determines that a public health hazard exists, BASA may undertake to have the necessary remedial work completed by its employees or a third-party at the expense of the owner, lessee or occupier of the premises, and to make any necessary arrangements for the payment of such work by the owner, lessee or occupier of the premises on an installment basis, which arrangements shall be mutually satisfactory to the owner, lessee or occupier. Under such circumstances, in the event satisfactory arrangements are not agreed upon by the BASA and the owner, lessee or occupier, the BASA may file a lien against such property.

(c) BASA is hereby authorized to conduct, by written advance notice, random and/or periodic inspection and televising, dye and/or smoke testing, and any other appropriate test or inspection, without cost to the residents of the Borough, of all existing sanitary sewer systems and structures in the Borough for compliance with this Ordinance and other laws pertaining to sanitary sewer systems and structures. Such testing will not be required when the owner, lessee or occupier of the land produces a valid Document of Certification issued by BASA in accordance with this Ordinance, which Document of Certification shall be sufficient proof of compliance for purpose of this Ordinance, for a period of two (2) years from the date of issuance.

(d) When illegal storm water or surface water connections or infiltration of ground or sub-surface water or conditions have been discovered, all necessary remedial work to correct such connection shall be completed by the owner, lessee or occupier of the premises, weather permitting, within sixty (60) days of the date such party receives notification of the illegal device, connection or condition.

(e) In the event the necessary remedial work would create extraordinary economic hardship for the owner, lessee or occupier of the premises, application may be made to BASA for an extension of up to an additional six (6) months to complete said remedial work. An extraordinary economic hardship shall be determined by the Board of BASA, upon consideration of the cost of the remedial work, the financial means of the owner(s) and other factors which the Board may determine to be relevant.

(f) BASA shall also have the power to institute suit in equity to restrain, prevent, remove or correct any connection, device, or condition from and/or to the sanitary sewer system.

**SECTION 8
POWERS CONFERRED HEREIN ARE IN ADDITION TO ALL OTHER
POWERS AND RESPONSIBILITIES OF BASA**

The powers conferred by the within Ordinance of the Borough shall be in addition to and not in substitution for any other powers conferred upon BASA to enforce and require the elimination of illegal storm water and surface water connections or infiltration of ground or sub-surface water to the BASA sanitary sewer system.

**SECTION 9
RULES AND REGULATIONS**

BASA is hereby authorized, empowered and directed to make rules and regulations for the operation and enforcement of this Ordinance as it deems necessary, which shall include, but not be limited to:

- (a) Establishing acceptable forms of security, guarantees, and escrow agreements;
- (b) Establishing the form of application; and
- (c) Establishing such other rules and regulations, consistent with this Ordinance, as are necessary for the operation and enforcement of this Ordinance.

In the event that BASA determines that any rule or regulation is required, it shall give the Borough at least sixty (60) days' written notice prior to its adoption and implementation by the BASA Board.

**SECTION 10
NO CONFLICT WITH GENERAL POLICE POWERS**

Nothing in this Ordinance shall limit, in any fashion whatsoever, the Borough's rights to enforce its Ordinances or the laws of the Commonwealth of Pennsylvania. 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 11
VIOLATION PENALTIES;
APPEAL OF FINDING OF ILLEGAL CONNECTION, DEVICE, OR CONDITION

(a) Any person, firm, corporation or entity which is found to have violated any sewage-related Borough Ordinance enforced by BASA and/or the Borough or who willfully violated or failed to comply with any provision of this Ordinance and the orders, rules, regulations and permits issued hereunder, shall pay a fine of not less than One Hundred (\$100) Dollars or no more than the maximum penalty set forth in the Pennsylvania Sewage Facilities Act, 35 P.S. § 750.13, or under Section 3308 of the Borough Code, following adjudication by a Judge of the Court of Common Pleas, for each violation. Each day on which a violation shall occur or continue to occur shall be deemed a separate and distinct violation. In addition to the penalties provided herein, BASA and the Borough may recover penalties, damages, costs, reasonable attorneys' fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person or user found to have violated this Ordinance or the orders, rules, regulations and permits issued hereunder.

(b) BASA shall also have the power to institute suit in equity to restrain, prevent or correct any illegal connection, device, or condition which causes or permits storm or surface water or the infiltration of ground or sub-surface water to enter into the BASA sanitary sewer system.

(c) Upon final adjudication that a violation of this Ordinance exists and refusal or failure to act by the property owner to undertake the repair, replacement or rehabilitation identified by written notice as herein provided, BASA shall have the right to enter onto the subject property to conduct the necessary work to bring the property into compliance with his Ordinance at the expense of the property owner and further, upon failure of the property owner to pay said expense, BASA shall have the right to file a lien against the subject property for the amount of said expense, together with the costs of filing and perfecting such lien.

(d) Any Applicant, purchaser, transferee, mortgagor, mortgagee or other person aggrieved by an initial determination by BASA personnel that an illegal connection, device or condition exists on real estate shall be permitted to file a request for a hearing before the Butler Area Sewer Authority's Board of Appeals. Any request for a hearing must be received by BASA within thirty (30) days of the date of BASA's notification to the Applicant, purchaser, transferee, mortgagor, mortgagee or other person that an illegal connection, device or condition exists. The hearing before the Board of Appeals shall be governed by applicable provisions of the Local Agency Law, 2 Pa.C.S. §§ 101 *et seq.* & 751 *et seq.*, and a right of appeal from the determination of the Board of Appeals shall be permitted in accordance with the Local Agency Law.

The Board of Appeals shall be empowered solely to determine whether or not any illegal connection, device or condition exists on the property. The Board of Appeals shall consist of two available members of the BASA Board and a third member appointed to the Board of Appeals by the governing body of the municipality wherein the property which is the subject of

the appeal is situated. If any municipality does not appoint a member to the Board of Appeals, a vacancy exists in any such appointment, or a member appointed is otherwise not available, the third member of the Board of Appeals shall be a member appointed by another municipality within the service area of BASA, or if no such member is available, the third member of the Board of Appeals shall be an available member of the BASA board. No appointee of any municipality to the Board of Appeals shall be involved in any inspection of property on behalf of the municipality or be engaged in the business, trade or occupation of performing plumbing or sewer line installation or repairs.

SECTION 12
SEVERABILITY

The provisions of this Ordinance are severable and if any Section, sentence, clause or phrase shall be held by a court of competent jurisdiction to be illegal, invalid or unconstitutional, the remaining portions of this Ordinance shall not be affected or impaired hereby.

SECTION 13
REPEALER

Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance be and the same are hereby repealed to the extent of such conflict, and Ordinance #154 is specifically repealed, as this Ordinance is an amendment and restatement thereof.

SECTION 14
EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage by Council and recording per Sections 1007 & 1008 of the Borough Code.

ORDAINED AND ENACTED INTO LAW, this 6th day of Dec., 2004.

ATTEST:

Lois J. Fennell
Borough Secretary

Borough of East Butler

Richard Day
Mayor

Earl W. Fennell
President, Borough Council