

**BEFORE THE BOROUGH COUNCIL OF THE BOROUGH OF EMMAUS
LEHIGH COUNTY, PENNSYLVANIA**

ORDINANCE NO. 1185

**AN ORDINANCE OF THE BOROUGH OF EMMAUS, LEHIGH COUNTY, PENNSYLVANIA, REQUIRING
TESTING, INSPECTION, REPAIR, AND REPLACEMENT OF BUILDING SEWERS AND SEWER LATERALS AND
PROVIDING FOR REMEDIES AND PENALTIES FOR NON-COMPLIANCE.**

WHEREAS, the United States Environmental Protection Agency ("EPA") established, through Consent Order of September 28, 2009, Docket # CWA-03-2009-0313DN (hereinafter, "Order"), the requirements and expectations of all municipalities whose sewage is treated at the Allentown City Klines Island Sewer Plant (hereinafter, "WWTP"); and

WHEREAS, as a result of the Order, the Borough of Emmaus (hereinafter, "Borough") has invested millions of dollars to reduce stormwater inflow and infiltration (hereinafter, "I&I") entering the Borough's sanitary sewer system which ultimately flows to the WWTP; and

WHEREAS, entities have opined that private building sewers and laterals are potential, significant contributors of I&I into sanitary sewer systems; and

WHEREAS, the Borough is advised that a sewer lateral inspection and repair program is vital to the proper maintenance of its municipal sanitary sewer system; and

WHEREAS, in order to address the concerns of EPA and the PADEP, the Borough desires to implement a program to inspect and ensure the proper maintenance of private building sewers and sewer laterals so as to comply with the Borough's part of a regional plan for sanitary sewers submitted to the EPA and PADEP in connection with the withdrawal of the Order; and

WHEREAS, Section 2000 of the Borough Code defines "Sanitary sewer" and "Sanitary sewer system" as a system for the collection of sewage and liquid wastes from the inside of buildings and structures and further prohibits the introduction of stormwater into the sanitary sewer system; and

WHEREAS, Section 2001(c) of the Borough Code authorizes Borough Council by Ordinance to enact regulations relating to the use and maintenance of such systems and further authorizes the imposition of penalties; and

WHEREAS, it is the desire of Borough Council to reduce or eliminate I&I in the Borough's sanitary sewer system, so as to reduce costs, fully comply with storm water requirements, cause positive environmental impacts and reduce stress on the WWTP; and

WHEREAS, Council considers the infiltration of stormwater into the sanitary sewer system through privately owned laterals to be contrary to the public health safety and general welfare.

NOW THEREFORE BE IT ORDAINED AND ENACTED, that the Council of the Borough of Emmaus hereby establishes by Ordinance a program for the testing, inspection, repair and replacement of building sewers and sewer laterals with the following requirements:

SECTION 1: TESTING OF BUILDING SEWERS AND LATERALS

A. PURPOSE.

The purpose and intent of this Ordinance is to provide for the operation and maintenance of the Borough's sanitary sewer system in a reliable and serviceable condition, to eliminate or minimize sewage overflows by eliminating or minimizing stoppages or blockages and to reduce sources of infiltration and inflow into the Borough's sanitary sewer system so as to comply with all applicable legal requirements pertaining to that system.

B. DEFINITIONS.

BUILDING SEWER

The extension of the sanitary sewer system from the sewer drainage system of any structure to the lateral of a sanitary sewer.

CERTIFICATE OF COMPLIANCE or COMPLIANCE CERTIFICATE

A certificate from the Public Works Inspector or his or her designee certifying that the Building Sewer or Sewer Lateral on a Property offered for Sale or Transfer conforms to the requirements set forth in Chapter 18 of the Borough of Emmaus Consolidated Code of Ordinances.

FAMILY

Direct relatives, limited to include mother, father, son, daughter, brother, sister, step-parents, step-children and spouses.

INFILTRATION AND INFLOW

The flow or seepage of stormwater or groundwater into the Building Sewer or Sewer Lateral, sometimes referred to as "I&I."

PROPERTY

Any real property that is located within the corporate limits of the Borough of Emmaus and connects, or is connected, to the Borough's sanitary sewer system.

PUBLIC WORKS INSPECTOR

The Borough of Emmaus Public Works Inspector or his or her designee.

SALE

The conveyance of an interest in Property which results in a change in the title to that Property. A Sale shall be deemed to occur upon the execution of an Agreement of Sale.

Transfer

The conveyance of an interest in Property which results in a change in the occupancy of that Property. A Transfer shall be deemed to occur upon the execution of a lease, or in the absence

of a written lease or other agreement for occupancy, the effective date of the oral lease or other agreement.

SEWER LATERAL

That part of the sanitary sewer system extending from a structure on the Property to the curb line or, if there is no curb line, to the Property line.

C. PROHIBITIONS.

It shall be unlawful for any owner of Property connected, or to be connected, to the Borough's sanitary sewer system to fail to perform required testing or to construct, operate or maintain a Building Sewer or Sewer Lateral in a defective condition. As used in this Ordinance, "defective condition" includes, but is not limited to, (1) displaced joints, (2) root obstruction, (3) substantial deterioration, (4) damaged or missing cleanout, (5) damaged or missing backwater overflow prevention device required pursuant to 2015 IPC Section 715.1 of the Borough Code, (6) any condition which will allow infiltration and inflow of extraneous water or exfiltration of sewage, (7) any condition that materially increase the possibility of a blockage or overflow, (8) constructed without a proper permit or with materials not approved by the Borough, (9) lack of a manufactured connection to the Borough's sewer system, (10) otherwise in violation of Borough requirements or (11) in such a condition that the tests required by this Section cannot be accomplished to the satisfaction of the Borough.

D. TESTING.

1. TESTING OF NEW BUILDING SEWERS OR SEWER LATERALS. All new Building Sewers and Sewer Laterals shall be tested by air, water or video inspection method. The method used shall be at the discretion of the Borough. The test shall encompass the full length of the Building Sewer or Sewer Lateral and shall conform to all testing requirements established or utilized by the Borough in its discretion. All testing required hereunder shall be performed by or on behalf of the Property owner(s) at his or her expense.

2. TESTING OF EXISTING BUILDING SEWERS AND SEWER LATERALS.

a. Conditions Requiring Cleaning and Testing of Building Sewers or Sewer Laterals. All building Sewers or Sewer Laterals, including but not limited to those serving residential, multiple residential, industrial and commercial properties connected to the Borough's sanitary sewer system, shall be cleaned and tested, at the Property owner's expense, when any of the following events occur in the opinion of the Public Works Inspector:

(1). The installation of additional plumbing facilities that produces a significant increase in sewage flow from the Property.

(2). A change of use of the Property that produces a significant increase in sewage flow from the Property served.

(3). Subsequent to a Sale or Transfer of the Property and prior to the passage of title or occupancy, except that a conveyance without full consideration of ownership between Family members does not require testing. A formal written waiver of the requirements of this Sub-section (3) may be obtained from the Borough of Emmaus Public Works Inspector if the Property owner can prove to the satisfaction of the

Borough that an approved inspection was conducted within the previous two (2) years of the Property transfer.

(4). Upon repair or replacement of all or part of the Building Sewer or Sewer Lateral.

(5). Upon a determination that the cleaning, testing, repair or replacement is required for the protection of the public health, safety, and welfare.

b. Exemptions and Waivers. The testing provisions of this Ordinance shall not apply to:

(1). A Sale or Transfer occurring prior to the effective date of this Ordinance;

(2). A Sale or Transfer occurring within ten (10) years of the completion of construction, or complete replacement, of a Building Sewer and Sewer Lateral, provided that the Property owner shall prove entitlement to the exemption to the satisfaction of the Public Works Inspector; ;

(3). The Sale or Transfer of Property to a buyer or transferee who at the time thereof had been actually and continuously residing at the Property with the Seller or Transferor for a period of not less than one (1) year; provided that the Property owner shall prove entitlement to the exemption to the satisfaction of the Public Works Inspector;

(4). A Sale or Transfer between Family Members where an inspection was performed and approved within two (2) years of the Sale or Transfer; provided that the Property Owner shall prove entitlement to the exemption to the satisfaction of the Public Works Inspector and

(5). A Sale or Transfer between a Property owner and a trust or other similar instrument; provided that there is no change in the occupancy of the Property and provided that the Property owner shall prove entitlement to the exemption to the satisfaction of the Public Works Inspector.

c. The availability of an exemption or a waiver hereunder shall not relieve the Property owner from compliance with all of the remaining requirements of this Chapter.

E. TESTING CRITERIA FOR BUILDING SEWERS AND SEWER LATERALS.

1. The owner or an agent of the owner of a Property shall notify the Borough at least twenty-four (24) hours prior to testing so that the Borough may witness the same. A failure to provide notice hereunder shall render the testing void at the option of the Public Works Inspector, who may order a re-test at the Property owner's expense.

2. All Building Sewers or Sewer Laterals shall be tested by television video inspection method in accordance with all requirements imposed by the Borough. When cleaning and testing of a Building Sewer or Sewer Lateral is required hereunder, the Building Sewer or Sewer Lateral shall first be cleaned and then tested using an internal video inspection for the full length of the Building Sewer or Sewer

Lateral. The internal video inspection shall be completed by a person or firm competent by experience to perform the work. Video recordings of the inspection shall be submitted to the Borough for verification of the condition of the Building Sewer or Sewer Lateral.

3. A Building Sewer or Sewer Lateral will comply with the provisions of this Chapter if video inspection verifies all of the following conditions:

a. The Building Sewer or Sewer Lateral is free of roots, grease deposits, and other solids which may impede or obstruct or may impede or obstruct in whole or in part the transmission of Sewage.

b. There are no illicit or illegal connections to the Building Sewer or Sewer Lateral such as roof or yard drainage facilities.

c. All joints in the Building Sewer or Sewer Lateral are tight and sound to prevent the exfiltration of sewage and the infiltration of groundwater.

d. The Building Sewer or Sewer Lateral is free of structural defects, cracks, breaks, or missing portions and the grade is reasonably uniform without major sags or offsets.

e. The Building Sewer or Sewer Lateral is equipped with at least one (1) cleanout located within five (5) feet of the building. If a cleanout does not exist, the owner will be required to place a clean out in if other repairs are required, however, if it is determined that a cleanout is the sole repair required, it shall not be mandatory to install a cleanout.

4. A video inspection shall be valid for a period of two (2) years from the date of the video.

F. ESCROWED FUNDS AND COMPLIANCE CERTIFICATE.

If weather or other conditions beyond the control of the Property owner prevent required repairs from being performed prior to the transfer of title following a Sale of Property or at the time of occupancy under an agreement, whether oral or written, to Transfer the Property, a sum sufficient to pay for such repairs as determined by the Public Works Inspector shall be paid to the Borough, along with all applicable fees, and a Compliance Certificate shall then be issued. If the proceeds of the completed Sale or Transfer are needed to make the required repair(s), a Compliance Certificate may be obtained within seven (7) days after the transfer of title or occupancy under an agreement to Transfer, provided that funds have been escrowed in an amount sufficient to make the required repairs. Escrowed funds shall be used to make and complete the required repairs and approve the same, all within thirty (30) days of the date of the transfer of title in the case of a Sale or occupancy under an agreement to Transfer.

G. TIMING.

A Compliance Certificate may be issued: (1) immediately after inspection if no repairs are required; (2) when the required repairs have been made, approved and all applicable fees paid; (3) upon payment to the Borough of an amount of money equal to the Public Works Inspector's good faith estimate of repair costs and inspection fees or (4) if the proceeds of the Sale or Transfer are needed for the repair, within seven (7) days after finalization or closing of the Sale or occupancy under a lease or

other agreement to Transfer the Property, provided the required funds have been placed into escrow for purposes of Building Sewers or Sewer Lateral repair or replacement.

H. ABILITY TO CHOOSE INSPECTOR.

The Property owner may select a qualified inspector to perform the inspection work. The inspector must be a licensed contractor in good standing in the Commonwealth of Pennsylvania experienced in sanitary sewer construction and testing. The Property owner may also authorize the Borough to perform the inspection work. In such instance, the Property owner shall pay a fee, as set forth in the Borough's fee schedule, as may be adopted by resolution from time-to-time. If the Borough solicits proposals for inspection services, the Property owner may select, at its own discretion, the selected inspector and pay the fee as agreed upon by the Borough. In all cases, inspection results shall be submitted to the Borough for review and approval or determination of required remedial mitigation.

I. TESTING FAILURE MITIGATION.

When an existing Building Sewer or Sewer Lateral fails to meet the conditions required by this Ordinance, the Property owner shall make all repairs necessary to bring the Building Sewer or Sewer Lateral into compliance with this Ordinance, or replace the Building Sewer or Sewer Lateral in accordance with all Borough requirements. All costs of repair or replacement of the Building Sewer or Sewer Lateral shall be borne by the Property owner.

J. BUILDING SEWER AND SEWER LATERAL COMPLIANCE, ISSUANCE OF CERTIFICATE OF COMPLIANCE.

The Borough shall review the final, submitted video for compliance with this Ordinance. When all conditions are met to the satisfaction of the Borough, the Building Sewer or Sewer Lateral shall be certified as complying with the provisions of this Ordinance and the Borough Code. The Borough shall thereupon issue a Certificate of Compliance to the Property owner, noting that the Building Sewer or Sewer Lateral serving the Property is properly equipped, structurally sound, meets the service conditions of the Borough of Emmaus and will not require testing for a two (2) year period from the date of issuance unless the Borough has reason to believe the Building Sewer or Sewer Lateral may have become defective since issuance of the Certificate of Compliance.

K. REPAIR OR REPLACEMENT OF BUILDING SEWER AND SEWER LATERAL UPON SALE OR TRANSFER.

The repairs or replacement of Building Sewers or Sewer Laterals that result from the testing required as result of the Sale or Transfer of Property shall be completed prior to the Sale or Transfer. For Property sold or transferred with escrowed funds for required repairs, such work shall be completed within 180 days after the Sale or Transfer.

L. HARDSHIP DEFERRALS.

1. In the event that the Property owner establishes to the satisfaction of the Borough that the required repair or replacement of a Building Sewer or Sewer Lateral will result in undue hardship inconsistent with the purpose or intent of this Chapter, a request for hardship status may be submitted to the Borough Manager for review and consideration by Borough Council. Grounds for granting a hardship deferral shall include:

- a. severe illness or incapacitation of the Property owner;
- b. the immediate transfer or removal of the Property owner from the state, thereby making the hiring of a contractor to repair or replace the Building Sewer or Sewer Lateral impractical or overly burdensome; and
- c. any physical or financial situation that would render compliance with the time limits for the repair or replacement of Building Sewer or Sewer Lateral extraordinarily difficult or impractical.

2. A Property owner to whom a hardship deferral is granted shall be given written notice thereof. Said notice shall inform the Property owner that the Building Sewer or Sewer Lateral repair or replacement requirement is deferred for a period of up to 180 days after the date on which the repairs were otherwise required or for such other definitive period in excess of 180 days as shall be determined by Borough Council.

3. A Property owner aggrieved by a decision of the Borough Council shall have the right to appeal in accordance with the Local Agency Law.

M. ENFORCEMENT.

In the event of a failure to comply with this Ordinance within the required, the Borough may bring an enforcement action and exercise other remedies as provided by Borough Code, the Commonwealth of Pennsylvania and all applicable laws, against the Property owner and any other responsible party. In addition hereto, any Property owner who fails to fully comply with this Ordinance shall be responsible for all damages that arise from or relate to such failure. For purposes of this Section, "damages" include all compensatory damages, fines, penalties, assessments, reasonable attorney and consulting fees incurred by the Borough and other monetary exactions that may be awarded to, levied, or assessed by any person, firm, corporation, company, or public entity.

N. EXTENSION OF TIME.

A Property owner may request that an extension of time for repairs or replacements that are required as a result of testing. Extension requests shall be in writing and must include the name and contact information of the party responsible for accomplishing the repair or replacement of the Building Sewer or Sewer Lateral. The Public Works Inspector shall review the request and may grant a time extension up to, but no more than, 180 days.

O. COMMON INTEREST DEVELOPMENTS.

The homeowners associations of a common interest development shall, provide video inspection verification of all privately-owned Building Sewers and Sewer Laterals within the common interest areas at least once every ten (10) years for duties and obligations imposed by this Ordinance in relation to any Building Sewer or Sewer Lateral located within a common area of the development. If no homeowners' association exists, then the individual unit owners shall be jointly and severally liable for the duties and obligations with respect to the Building Sewers and Sewer Laterals as required by this Ordinance.

P. PENALTIES.

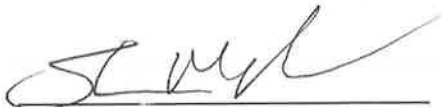
Any Property owner or other person subject to this Ordinance who violates or permits a violation of this Ordinance shall, upon being found guilty in a summary criminal proceeding before a Magisterial District Judge, pay the Borough of Emmaus a fine of at least \$500, not to exceed \$1,000.00, plus all court costs and reasonable attorney's fees incurred by the Borough of Emmaus on account of such violation. Each day that a violation continues shall constitute a separate violation hereof. Further, the appropriate officers or agents of the Borough of Emmaus are hereby authorized to issue a cease-and-desist order and/or to seek equitable relief, including injunctions, to enforce compliance herewith in which case the Borough shall be entitled to recover in addition to any penalties or other relief its reasonable attorney's and engineering fees, expert fees and court costs. If the Property owner or other person subject to this Ordinance fails to remedy a violation causing immediate public harm after receiving due notice, the Borough, its employees, and / or contractors are authorized to enter the Property and perform all work necessary to remedy such condition and the Property owner or such other person subject to this Ordinance shall pay all costs and expenses incurred by the Borough within thirty days of receipt of an invoice for the work. A failure to pay hereunder may result in the filing of a municipal lien against the Property or the initiation of other legal remedies.

SECTION 2. REPEALER. All existing Ordinances of the Borough or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed.

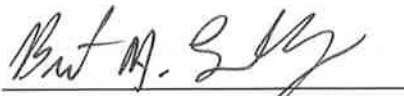
SECTION 3. SAVINGS CLAUSE. If any section or provision of this Ordinance is declared by any Court of competent jurisdiction to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect the constitutionality, legality or validity of this Ordinance as a whole, nor the constitutionality, legality or validity of any other section or provision of this Ordinance other than the one so declared to be unconstitutional, illegal or invalid.

SECTION 4. EFFECTIVE DATE. The provisions of this Ordinance shall become effective ninety (90) days after the enactment hereof in accordance with the requirements of the Borough Code.

DULY ADOPTED this 21st day of January, 2019, in lawful session duly assembled.



Shane M. Pepe
Borough Manager



Brent A. Labenberg
Borough Council President

AND NOW, this 21st day of January, 2019, the above Ordinance is hereby **APPROVED** by the Mayor of the Borough of Emmaus in due course.



Lee Ann Gilbert, Mayor
Borough of Emmaus

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WHEREAS, as a result of the Order, the Borough of Emmaus (hereinafter, "Borough") has invested millions of dollars to reduce stormwater inflow and infiltration (hereinafter, "I&I") entering the Borough's sanitary sewer system which ultimately flows to the WWTP; and

WHEREAS, entities have opined that private building sewers and laterals are potential, significant contributors of I&I into sanitary sewer systems; and

WHEREAS, the Borough is advised that a sewer lateral inspection and repair program is vital to the proper maintenance of its municipal sanitary sewer system; and

WHEREAS, in order to address the concerns of EPA and the PADEP, the Borough desires to implement a program to inspect and ensure the proper maintenance of private building sewers and sewer laterals so as to comply with the Borough's part of a regional plan for sanitary sewers submitted to the EPA and PADEP in connection with the withdrawal of the Order; and

WHEREAS, Section 2000 of the Borough Code defines "Sanitary sewer" and "Sanitary sewer system" as: a system for the collection of sewage and liquid wastes from the inside of buildings and structures and further prohibits the introduction of stormwater into the sanitary sewer system; and

WHEREAS, Section 2001(c) of the Borough Code authorizes Borough Council by Ordinance to enact regulations relating to the use and maintenance of such systems and further authorizes the imposition of penalties; and

WHEREAS, it is the desire of Borough Council to reduce or eliminate I&I in the Borough's sanitary sewer system, so as to reduce costs, fully comply with storm water requirements, cause positive environmental impacts and reduce stress on the WWTP; and

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A. PURPOSE.

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B. DEFINITIONS.

BUILDING SEWER

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CERTIFICATE OF COMPLIANCE or COMPLIANCE CERTIFICATE

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The conveyance of an interest in Property which results in a change in the occupancy of that Property. A Transfer shall be deemed to occur upon the execution of a lease, or in the absence

of a written lease or other agreement for occupancy, the effective date of the oral lease or other agreement.

SEWER LATERAL

That part of the sanitary sewer system extending from a structure on the Property to the curb line or, if there is no curb line, to the Property line.

C. PROHIBITIONS.

It shall be unlawful for any owner of Property connected, or to be connected, to the Borough's sanitary sewer system to fail to perform required testing or to construct, operate or maintain a Building Sewer or Sewer Lateral in a defective condition. As used in this Ordinance, "defective condition" includes, but is not limited to, (1) displaced joints, (2) root obstruction, (3) substantial deterioration, (4) damaged or missing cleanout, (5) damaged or missing backwater overflow prevention device required pursuant to 2015 IPC Section 715.1 of the Borough Code, (6) any condition which will allow infiltration and inflow of extraneous water or exfiltration of sewage, (7) any condition that materially increase the possibility of a blockage or overflow, (8) constructed without a proper permit or with materials not approved by the Borough, (9) lack of a manufactured connection to the Borough's sewer system, (10) otherwise in violation of Borough requirements or (11) in such a condition that the tests required by this Section cannot be accomplished to the satisfaction of the Borough.

D. TESTING.

1. TESTING OF NEW BUILDING SEWERS OR SEWER LATERALS. All new Building Sewers and Sewer Laterals shall be tested by air, water or video inspection method. The method used shall be at the discretion of the Borough. The test shall encompass the full length of the Building Sewer or Sewer Lateral and shall conform to all testing requirements established or utilized by the Borough in its discretion. All testing required hereunder shall be performed by or on behalf of the Property owner(s) at his or her expense.

2. TESTING OF EXISTING BUILDING SEWERS AND SEWER LATERALS.

a. Conditions Requiring Cleaning and Testing of Building Sewers or Sewer Laterals. All building Sewers or Sewer Laterals, including but not limited to those serving residential, multiple residential, industrial and commercial properties connected to the Borough's sanitary sewer system, shall be cleaned and tested, at the Property owner's expense, when any of the following events occur in the opinion of the Public Works Inspector:

(1). The installation of additional plumbing facilities that produces a significant increase in sewage flow from the Property.

(2). A change of use of the Property that produces a significant increase in sewage flow from the Property served.

(3). Subsequent to a Sale or Transfer of the Property and prior to the passage of title or occupancy, except that a conveyance without full consideration of ownership between Family members does not require testing. A formal written waiver of the requirements of this Sub-section (3) may be obtained from the Borough of Emmaus Public Works Inspector if the Property owner can prove to the satisfaction of the

Borough that an approved inspection was conducted within the previous two (2) years of the Property transfer.

(4). Upon repair or replacement of all or part of the Building Sewer or Sewer Lateral.

(5). Upon a determination that the cleaning, testing, repair or replacement is required for the protection of the public health, safety, and welfare.

b. Exemptions and Waivers. The testing provisions of this Ordinance shall not apply to:

(1). A Sale or Transfer occurring prior to the effective date of this Ordinance;

(2). A Sale or Transfer occurring within ten (10) years of the completion of construction, or complete replacement, of a Building Sewer and Sewer Lateral, provided that the Property owner shall prove entitlement to the exemption to the satisfaction of the Public Works Inspector; ;

(3). The Sale or Transfer of Property to a buyer or transferee who at the time thereof had been actually and continuously residing at the Property with the Seller or Transferor for a period of not less than one (1) year; provided that the Property owner shall prove entitlement to the exemption to the satisfaction of the Public Works Inspector;

(4). A Sale or Transfer between Family Members where an inspection was performed and approved within two (2) years of the Sale or Transfer; provided that the Property Owner shall prove entitlement to the exemption to the satisfaction of the Public Works Inspector and

(5). A Sale or Transfer between a Property owner and a trust or other similar instrument; provided that there is no change in the occupancy of the Property and provided that the Property owner shall prove entitlement to the exemption to the satisfaction of the Public Works Inspector.

c. The availability of an exemption or a waiver hereunder shall not relieve the Property owner from compliance with all of the remaining requirements of this Chapter.

E. TESTING CRITERIA FOR BUILDING SEWERS AND SEWER LATERALS.

1. The owner or an agent of the owner of a Property shall notify the Borough at least twenty-four (24) hours prior to testing so that the Borough may witness the same. A failure to provide notice hereunder shall render the testing void at the option of the Public Works Inspector, who may order a re-test at the Property owner's expense.

2. All Building Sewers or Sewer Laterals shall be tested by television video inspection method in accordance with all requirements imposed by the Borough. When cleaning and testing of a Building Sewer or Sewer Lateral is required hereunder, the Building Sewer or Sewer Lateral shall first be cleaned and then tested using an internal video inspection for the full length of the Building Sewer or Sewer

Lateral. The internal video inspection shall be completed by a person or firm competent by experience to perform the work. Video recordings of the inspection shall be submitted to the Borough for verification of the condition of the Building Sewer or Sewer Lateral.

3. A Building Sewer or Sewer Lateral will comply with the provisions of this Chapter if video inspection verifies all of the following conditions:

a. The Building Sewer or Sewer Lateral is free of roots, grease deposits, and other solids which may impede or obstruct or may impede or obstruct in whole or in part the transmission of Sewage.

b. There are no illicit or illegal connections to the Building Sewer or Sewer Lateral such as roof or yard drainage facilities.

c. All joints in the Building Sewer or Sewer Lateral are tight and sound to prevent the exfiltration of sewage and the infiltration of groundwater.

d. The Building Sewer or Sewer Lateral is free of structural defects, cracks, breaks, or missing portions and the grade is reasonably uniform without major sags or offsets.

e. The Building Sewer or Sewer Lateral is equipped with at least one (1) cleanout located within five (5) feet of the building. If a cleanout does not exist, the owner will be required to place a clean out in if other repairs are required, however, if it is determined that a cleanout is the sole repair required, it shall not be mandatory to install a cleanout.

4. A video inspection shall be valid for a period of two (2) years from the date of the video.

F. ESCROWED FUNDS AND COMPLIANCE CERTIFICATE.

If weather or other conditions beyond the control of the Property owner prevent required repairs from being performed prior to the transfer of title following a Sale of Property or at the time of occupancy under an agreement, whether oral or written, to Transfer the Property, a sum sufficient to pay for such repairs as determined by the Public Works Inspector shall be paid to the Borough, along with all applicable fees, and a Compliance Certificate shall then be issued. If the proceeds of the completed Sale or Transfer are needed to make the required repair(s), a Compliance Certificate may be obtained within seven (7) days after the transfer of title or occupancy under an agreement to Transfer, provided that funds have been escrowed in an amount sufficient to make the required repairs. Escrowed funds shall be used to make and complete the required repairs and approve the same, all within thirty (30) days of the date of the transfer of title in the case of a Sale or occupancy under an agreement to Transfer.

G. TIMING.

A Compliance Certificate may be issued: (1) immediately after inspection if no repairs are required; (2) when the required repairs have been made, approved and all applicable fees paid; (3) upon payment to the Borough of an amount of money equal to the Public Works Inspector's good faith estimate of repair costs and inspection fees or (4) if the proceeds of the Sale or Transfer are needed for the repair, within seven (7) days after finalization or closing of the Sale or occupancy under a lease or

other agreement to Transfer the Property, provided the required funds have been placed into escrow for purposes of Building Sewers or Sewer Lateral repair or replacement.

H. ABILITY TO CHOOSE INSPECTOR.

The Property owner may select a qualified inspector to perform the inspection work. The inspector must be a licensed contractor in good standing in the Commonwealth of Pennsylvania experienced in sanitary sewer construction and testing. The Property owner may also authorize the Borough to perform the inspection work. In such instance, the Property owner shall pay a fee, as set forth in the Borough's fee schedule, as may be adopted by resolution from time-to-time. If the Borough solicits proposals for inspection services, the Property owner may select, at its own discretion, the selected inspector and pay the fee as agreed upon by the Borough. In all cases, inspection results shall be submitted to the Borough for review and approval or determination of required remedial mitigation.

I. TESTING FAILURE MITIGATION.

When an existing Building Sewer or Sewer Lateral fails to meet the conditions required by this Ordinance the Property owner shall make all repairs necessary to bring the Building Sewer or Sewer Lateral into compliance with this Ordinance, or replace the Building Sewer or Sewer Lateral in accordance with all Borough requirements. All costs of repair or replacement of the Building Sewer or Sewer Lateral shall be borne by the Property owner.

J. BUILDING SEWER AND SEWER LATERAL COMPLIANCE, ISSUANCE OF CERTIFICATE OF COMPLIANCE.

The Borough shall review the final, submitted video for compliance with this Ordinance. When all conditions are met to the satisfaction of the Borough, the Building Sewer or Sewer Lateral shall be certified as complying with the provisions of this Ordinance and the Borough Code. The Borough shall thereupon issue a Certificate of Compliance to the Property owner, noting that the Building Sewer or Sewer Lateral serving the Property is properly equipped, structurally sound, meets the service conditions of the Borough of Emmaus and will not require testing for a two (2) year period from the date of issuance unless the Borough has reason to believe the Building Sewer or Sewer Lateral may have become defective since issuance of the Certificate of Compliance.

K. REPAIR OR REPLACEMENT OF BUILDING SEWER AND SEWER LATERAL UPON SALE OR TRANSFER.

The repairs or replacement of Building Sewers or Sewer Laterals that result from the testing required as result of the Sale or Transfer of Property shall be completed prior to the Sale or Transfer. For Property sold or transferred with escrowed funds for required repairs, such work shall be completed within 180 days after the Sale or Transfer.

L. HARDSHIP DEFERRALS.

1. In the event that the Property owner establishes to the satisfaction of the Borough that the required repair or replacement of a Building Sewer or Sewer Lateral will result in undue hardship inconsistent with the purpose or intent of this Chapter, a request for hardship status may be submitted to the Borough Manager for review and consideration by Borough Council. Grounds for granting a hardship deferral shall include:

a. severe illness or incapacitation of the Property owner;

b. the immediate transfer or removal of the Property owner from the state, thereby making the hiring of a contractor to repair or replace the Building Sewer or Sewer Lateral impractical or overly burdensome; and

c. any physical or financial situation that would render compliance with the time limits for the repair or replacement of Building Sewer or Sewer Lateral extraordinarily difficult or impractical.

2. A Property owner to whom a hardship deferral is granted shall be given written notice thereof. Said notice shall inform the Property owner that the Building Sewer or Sewer Lateral repair or replacement requirement is deferred for a period of up to 180 days after the date on which the repairs were otherwise required or for such other definitive period in excess of 180 days as shall be determined by Borough Council.

3. A Property owner aggrieved by a decision of the Borough Council shall have the right to appeal in accordance with the Local Agency Law.

M. ENFORCEMENT.

In the event of a failure to comply with this Ordinance within the required, the Borough may bring an enforcement action and exercise other remedies as provided by Borough Code, the Commonwealth of Pennsylvania and all applicable laws, against the Property owner and any other responsible party. In addition hereto, any Property owner who fails to fully comply with this Ordinance shall be responsible for all damages that arise from or relate to such failure. For purposes of this Section, "damages" include all compensatory damages, fines, penalties, assessments, reasonable attorney and consulting fees incurred by the Borough and other monetary exactions that may be awarded to, levied, or assessed by any person, firm, corporation, company, or public entity.

N. EXTENSION OF TIME.

A Property owner may request that an extension of time for repairs or replacements that are required as a result of testing. Extension requests shall be in writing and must include the name and contact information of the party responsible for accomplishing the repair or replacement of the Building Sewer or Sewer Lateral. The Public Works Inspector shall review the request and may grant a time extension up to, but no more than, 180 days.

O. COMMON INTEREST DEVELOPMENTS.

The homeowners associations of a common interest development shall, provide video inspection verification of all privately-owned Building Sewers and Sewer Laterals within the common interest areas at least once every ten (10) years for duties and obligations imposed by this Ordinance in relation to any Building Sewer or Sewer Lateral located within a common area of the development. If no homeowners' association exists, then the individual unit owners shall be jointly and severally liable for the duties and obligations with respect to the Building Sewers and Sewer Laterals as required by this Ordinance.

P. PENALTIES.

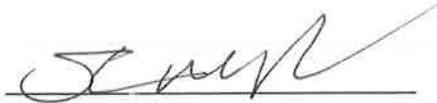
Any Property owner or other person subject to this Ordinance who violates or permits a violation of this Ordinance shall, upon being found guilty in a summary criminal proceeding before a Magisterial District Judge, pay the Borough of Emmaus a fine of at least \$500, not to exceed \$1,000.00, plus all court costs and reasonable attorney's fees incurred by the Borough of Emmaus on account of such violation. Each day that a violation continues shall constitute a separate violation hereof. Further, the appropriate officers or agents of the Borough of Emmaus are hereby authorized to issue a cease-and-desist order and/or to seek equitable relief, including injunctions, to enforce compliance herewith in which case the Borough shall be entitled to recover in addition to any penalties or other relief its reasonable attorney's and engineering fees, expert fees and court costs. If the Property owner or other person subject to this Ordinance fails to remedy a violation causing immediate public harm after receiving due notice, the Borough, its employees, and / or contractors are authorized to enter the Property and perform all work necessary to remedy such condition and the Property owner or such other person subject to this Ordinance shall pay all costs and expenses incurred by the Borough within thirty days of receipt of an invoice for the work. A failure to pay hereunder may result in the filing of a municipal lien against the Property or the initiation of other legal remedies.

SECTION 2. REPEALER. All existing Ordinances of the Borough or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed.

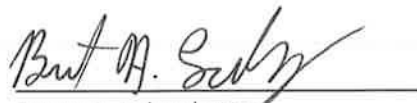
SECTION 3. SAVINGS CLAUSE. If any section or provision of this Ordinance is declared by any Court of competent jurisdiction to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect the constitutionality, legality or validity of this Ordinance as a whole, nor the constitutionality, legality or validity of any other section or provision of this Ordinance other than the one so declared to be unconstitutional, illegal or invalid.

SECTION 4. EFFECTIVE DATE. The provisions of this Ordinance shall become effective ninety (90) days after the enactment hereof in accordance with the requirements of the Borough Code.

DULY ADOPTED this 21st day of January, 2019, in lawful session duly assembled.



Shane M. Pepe
Borough Manager



Brent A. Labenberg
Borough Council President

AND NOW, this 21st day of January, 2019, the above Ordinance is hereby **APPROVED** by the Mayor of the Borough of Emmaus in due course.



Lee Ann Gilbert, Mayor
Borough of Emmaus