

LOWER MACUNGIE TOWNSHIP  
Lehigh County, Pennsylvania

ORDINANCE NO. 2022-05  
(Duly Adopted October 6, 2022)

AN ORDINANCE OF THE LOWER MACUNGIE TOWNSHIP BOARD OF COMMISSIONERS AMENDING CHAPTER 23B, PERKIOMEN CREEK HEADWATERS ACT 167 STORMWATER MANAGEMENT ORDINANCE OF LOWER MACUNGIE TOWNSHIP, PART 1 GENERAL PROVISIONS, BY QUALIFYING EXEMPTIONS AND BY ADDING PROVISIONS FOR ERRONEOUSLY ISSUED PERMITS, CONFLICTS BETWEEN CHAPTERS AND A SEVERABILITY CLAUSE; PART 2 DEFINITIONS, BY ADDING CERTAIN DEFINITIONS AND RESTATING OTHERS; PART 3, STORMWATER MANAGEMENT REQUIREMENTS, BY CLARIFYING THAT THE CHAPTER APPLIES TO REGULATED ACTIVITIES IN THE PERKIOMEN CREEK WATERSHED AND BY CLARIFYING REQUIRED EROSION AND SEDIMENTATION CONTROL DURING REGULATED EARTH DISTURBANCE ACTIVITIES; PART 4 DRAINAGE PLAN REQUIREMENTS, BY AMENDING THE STANDARDS FOR DRAINAGE PLAN REVIEW, HARDSHIP WAIVER PROCEDURE, RESUBMISSION OF DISAPPROVED STORMWATER MANAGEMENT PLANS, TERMS OF APPROVAL VALIDITY AND THE REQUIREMENTS FOR STORMWATER BMP AS-BUILTS; PART 5 INSPECTIONS, BY ESTABLISHING THE SCHEDULE FOR INSPECTIONS OF STORMWATER BMPS; PART 7 STORMWATER BMP OPERATIONS AND MAINTENANCE PLAN REQUIREMENTS BY CLARIFYING THE RESPONSIBILITY OF DEVELOPERS AND LANDOWNERS IN THE OPERATION AND MAINTENANCE OF BMPS, COMPLIANCE WITH THE STORMWATER FACILITIES OPERATION AND MAINTENANCE AGREEMENT, CLARIFYING THE APPLICABILITY OF THE MUNICIPAL STORMWATER BMP OPERATION AND MAINTENANCE FUND, AND ESTABLISHING A FINANCIAL PERFORMANCE GUARANTEE FOR SUBDIVISIONS AND LAND DEVELOPMENT; PART 8

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**PROHIBITIONS, BY AMENDING PROHIBITED DISCHARGES, PROHIBITED CONNECTIONS AND ROOF DRAINS TO INCLUDE SUMP PUMPS, AND BY ADDING A SECTION PROHIBITING THE ALTERATION OF BMPS; AND, PART 9 RIGHT OF ENTRY, NOTIFICATION AND ENFORCEMENT, BY AMENDING APPEALS TO CLARIFY THAT APPEALS FROM ACTIONS UNDER THIS CHAPTER 23B ARE HEARD BY THE BOARD OF COMMISSIONERS.**

**NOW, THEREFORE,** it is hereby **ENACTED** and **ORDAINED** by the Lower Macungie Township Board of Commissioners as follows:

**Section 1.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 1 General Provisions, Section 106 Exemptions, is amended by adding a new subsection 6., to read:  
**§ 23B-106. Exemptions.**

\* \* \* \* \*

6. The Township may deny or revoke any exemption pursuant to this section at any time for any project that the Township believes may pose a threat to public health, safety, or the environment.

\* \* \* \* \*

**Section 2.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 1 General Provisions, is amended by adding a new Section 109, Erroneous Permit, to read:

\* \* \* \* \*

**§ 23B-109. Erroneous Permit.**

Any permit or authorization issued or approved based on false, misleading, or erroneous information provided by an applicant is void without the necessity of any proceedings for revocation. Any work undertaken or use established pursuant to such permit or other authorization

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is unlawful. No action may be taken by a board, agency, or employee of the Township purporting to validate such a violation.

**Section 3.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 1 General Provisions, is amended by adding a new section, Section 110 Conflict Between Chapters, to read as follows:

**§ 23B-110 Conflict Between Chapters**

In the event of any inconsistency between the requirements of this Chapter **23B** and any other chapter, ordinance or regulation, the strictest chapter, ordinance or regulation shall control.

**Section 4.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 1 General Provisions, is amended by adding a new section, Section 111 Severability, to read as follows:

**§ 23B-111 Severability.**

In the event a court of competent jurisdiction declares any section or provision of this Chapter **23B** invalid or unenforceable, such decision shall not affect the validity of any of the remaining sections or provisions of the Chapter **23B**.

**Section 5.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 2 Definitions, is amended by adding certain definitions, and deleting and replacing other definitions, as follows:

**§ 23B-201 Definitions.**

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**APPLICANT**

A landowner, developer, or other person who has filed an application with the Township for approval to engage in any earth moving or other regulated activity in the Township.

**BEST MANAGEMENT PRACTICE (BMP)**

Activities, facilities, measures or procedures used to manage stormwater quantity and quality impacts from the regulated activities listed in § 23B-105, to meet state water quality requirements, to promote groundwater recharge and to otherwise meet the purposes of this Chapter 23B. Stormwater BMPs are commonly grouped into one of two broad categories or measures: structural and non-structural. Non-structural BMP's or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff, whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff.

\* \* \* \* \*

**CARBONATE BEDROCK**

Rock consisting chiefly of carbonate minerals, such as limestone and dolomite; specifically, a sedimentary rock composed of more than 50% by weight of carbonate minerals that underlies soil or other unconsolidated, superficial material.

\* \* \* \* \*

**CONSERVATION DISTRICT**

The agency with authority granted by a delegated agreement executed by the DEP in order to administer and enforce all, or a portion of, the regulations promulgated under 25 Pa. Code 102 - Lehigh County Conservation District, its successors and assigns.

\* \* \* \* \*

**DEVELOPMENT SITE (SITE)**

The specific tract of land for which a regulated activity or earth disturbance is proposed, conducted, or maintained.

\* \* \* \* \*

**EROSION AND SEDIMENT CONTROL PLAN**

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A plan for a project site which identifies BMPs to minimize accelerated erosion and sedimentation.

\* \* \* \* \*

**FEMA**

Federal Emergency Management Agency.

\* \* \* \* \*

**MUNICIPALITY (TOWNSHIP)**

Lower Macungie Township, Lehigh County, Pennsylvania.

\* \* \* \* \*

**PERVIOUS SURFACE (PERVIOUS COVER)**

Any area not defined as impervious.

\* \* \* \* \*

**REGULATED EARTH DISTURBANCE ACTIVITIES**

Activity involving earth disturbance, other than agricultural plowing or tilling, of 10,000 square feet or more subject to regulation under 25 Pa. Code 92, 25 Pa. Code 102, or the Clean Streams Law, 35 P.S. §§ 693.1 et seq.

\* \* \* \* \*

**RUNOFF**

Any part of precipitation which flows over the land.

\* \* \* \* \*

**SEDIMENT**

Soils or other materials transported by surface water as a product of erosion.

\* \* \* \* \*

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## **STORMWATER MANAGEMENT CONTROLS (A/K/A STORMWATER MANAGEMENT FACILITY)**

Any structure, natural or man-made, that, due to its condition, design, or construction, conveys, stores, or otherwise manages stormwater runoff. Typical stormwater management facilities include but are not limited to: detention and retention basins; open channels; storm sewers; pipes; and, infiltration facilities.

\* \* \* \* \*

## **WATERS OF THIS COMMONWEALTH**

Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs, and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

\* \* \* \* \*

## **WATERSHED**

The region or area drained by a river, watercourse, or other surface water of this Commonwealth.

\* \* \* \* \*

**Section 6.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 3 Stormwater Management Requirements, Section 301 General Requirements, subsections 1., is deleted in its entirety and restated to read:

### **§ 23B-301 General Requirements.**

1. All regulated activities in the Perkiomen Creek Watershed shall be subject to the stormwater management requirements of this Chapter **23B**.

\* \* \* \* \*

**Section 7.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 3

Stormwater Management Requirements, Section 303 Erosion and Sediment Control During Regulated Earth Disturbance Activities, subsection 1., is amended by deleting the sentence that currently reads: "Written approval by DEP or the conservation district shall satisfy this requirement."

**Section 8.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 4 Drainage Plan Requirements, Section 405 Drainage Plan Review, is amended by deleting subsection 4 in its entirety.

**Section 9.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 4 Drainage Plan Requirements, Section 407 Hardship Waiver Procedure, subsection 3 is amended by deleting "Zoning Hearing Board" and substituting in its place "Lower Macungie Township Board of Commissioners."

**Section 10.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 4 Drainage Plan Requirements, Section 407 Hardship Waiver Procedure, is amended by adding a new subsection 5, to read as follows:

§ 23B-407 **Hardship Waiver Procedure.**

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5. No waiver or modification of any regulated stormwater activity involving earth disturbance equal to or greater than one acre may be granted by the Township unless that action is approved in advance, in writing, by DEP or the conservation district.

**Section 11.** The Code of Lower Macungie Township, Chapter 23B, , Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 4 Drainage Plan Requirements, is further amended by adding a new section, Section 408 Resubmission of Disapproved Stormwater Management Plan, to read as follows:

**§ 23B-408 Resubmission of Disapproved Stormwater Management Plans.**

A disapproved stormwater management plan may be resubmitted to the Township, with all required revisions addressing the Township's concerns, in accordance with Section 404. The applicable review fee must accompany a resubmission of a disapproved stormwater management plan.

**Section 12.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 4 Drainage Plan Requirements, is further amended by adding a new section, Section 409 Authorization to Construct and Term Validity, to read as follows:

**§ 23B-409 Authorization to Construct and Term of Validity.**

The Township's approval of a stormwater management plan authorizes the regulated activities contained in the stormwater management plan for a maximum term of validity of five years from the date of approval. The Township may specify a term of validity shorter than five years in the approval of any specific stormwater management plan. Terms of the validity shall commence on the date the Township signs the approval for a stormwater management plan. If an approved stormwater management plan is not completed according to section 410 within the term of validity, the Township make consider the stormwater management plan void. Stormwater management plans that are considered void or which are disapproved by the Township shall be resubmitted in accordance with section 408 of this Chapter **23B**.



**Section 13.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 4 Drainage Plan Requirements, is further amended by adding a new section, Section 410 As-Built Plans, Completion Certificate and Final Inspection, to read as follows:

**§ 23B-410 As-Built Plans, Completion Certificate, and Final Inspection.**

1. The developer shall be responsible for providing certified, reproduceable as-built plans of all stormwater management BMP's included in the approved stormwater management plan. The as-built plans and an explanation of any discrepancies with the construction plans shall be submitted to the Township. The as-built submission shall include a certification of completion signed by qualified professional verifying that all pertinent stormwater management BMP's have been constructed according to the approved plans and specifications.
2. Developer also shall provide a full plan set in .pdf format as well as geographically referenced ACAD drawings or Esri shapefiles of the full design, spatially referenced in the State Plane PA South coordinate system. (ACAD drawings prepared in ACAD's proprietary XY coordinate system will not be accepted.) These files shall be provided upon submission of as-built plans, for review and approval prior to acceptance of the improvements as constructed and closeout of the project.
3. After receipt of the completion certification by the Township, the Township may conduct a final inspection.

**Section 14.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 5 Inspections, Section 501 Schedule of Inspections, is amended by adding new subsections 3. and 4., to read as follows:

§ 23B-501 **Schedule of Inspections.**

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3. The landowner or owner's designee (including the Township for dedicated and owned facilities) shall inspect stormwater management BMPs, facilities and/or structures installed under this Chapter **23B** according to the following minimum frequencies, to ensure the stormwater management BMPs, facilities and/or structures continue to function as intended:

- A. Annually for the first five years
- B. Once every 3 years thereafter
- C. During or immediately after the cessation of a 10-year or greater storm.

4. Inspections should be conducted during or immediately following precipitation events. A written inspection report shall be created to document each inspection. The inspection report shall contain the date and time of the inspection, the individuals who completed the inspection, the location of the stormwater management BMP, facility or structure inspected, observations on performance, and recommendations for improving performance, if applicable. Inspection reports shall be submitted to the Township within 30 days following the completion of the inspection.

**Section 15.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 7 Stormwater BMP Operations and Maintenance Plan Requirements, Section 701 General Requirements, is deleted in its entirety and restated as follows:

§ 23B-701 **General Requirements.**

No regulated earth disturbance activities within the Township shall commence until the applicant obtains written approval from the Township Engineer of the BMP operations and maintenance

plan, which identifies and describes how the permanent (e.g. post construction) stormwater management BMPs will be properly operated and maintained.

**Section 16.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 7 Stormwater BMP Operations and Maintenance Plan Requirements, Section 702 Responsibilities for Operations and Maintenance of BMPs, is amended by adding a new subsection 3. to read as follows:

**§ 23B-702 Responsibilities for Operations and Maintenance of BMPs.**

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3. Responsibilities of developers and landowners:

A. Facilities, areas, or structures used as stormwater management BMPs shall be enumerated as permanent real estate appurtenances and recorded as a deed restriction or restrictive covenant that runs with the land.

B. The stormwater management O&M plan shall be recorded with the Recorder of Deeds of Lehigh County and serve as a deed restriction or a restrictive covenant that runs with the land.

C. The Township may take enforcement action against a landowner for any failure to satisfy the provisions of this section 702.

**Section 17.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 7 Stormwater BMP Operations and Maintenance Plan Requirements, Section 704 Operations and Maintenance Agreement for Privately Owned Stormwater BMPs, is amended by adding a new subsection 3., to read as follows:

**§ 23B-704 Operations and Maintenance Agreement for Privately Owned Stormwater BMPs.**

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3. The owner is responsible for operation and maintenance of the stormwater management BMP's. If the owner fails to adhere to the stormwater facilities operation and maintenance agreement, the Township may perform the services required and charge the owner the cost of the Township's services, and all other Township costs associated with the owner's non-compliance. Nonpayment of Township costs or Township fees may result in a lien against the property.

**Section 18.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 7 Stormwater BMP Operations and Maintenance Plan Requirements, Section 707 Municipal Stormwater BMP Operations and Maintenance Fund, subsection 1., is deleted in its entirety and restated as follows:

**§ 23B-707 Municipal Stormwater BMP Operations and Maintenance Fund.**

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1. If stormwater management BMPs are accepted by the Township after an offer of dedication, the Township may require persons installing and/or owning the stormwater management BMPs to pay a specified amount to the Municipal Stormwater BMP Operations and Maintenance Fund to help defray costs of future operations and maintenance activities. The amount may be determined as follows:

A. If the stormwater management BMP is to be privately and maintained, the amount shall cover the cost of periodic inspections by the Township, in perpetuity, as determined by the Township.

B. If the stormwater management BMP is to be owned and maintained by the Township, the amount shall cover the estimated costs for operation and maintenance, in perpetuity, as determined by the Township.

C. The amount determined by the Township shall then be converted to net present value.

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**Section 19.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 7 Stormwater BMP Operations and Maintenance Plan Requirements, is amended by adding a new Section 708 Performance Guarantee, to read as follows:

**§ 23B-708 Performance Guarantee.**

For stormwater management site plans that involve subdivision and/or land development, the applicant shall provide a financial guarantee to the Township for the timely installation and proper construction of all stormwater management BMPs as required by the approved stormwater management site plan, this Chapter **23B**, Chapter **22A**, Subdivision and Land Development, and in accordance with sections 509, 510 and 511 of the Pennsylvania Municipalities Planning Code, 53 P.S. §§ 10509 - 10511.

**Section 20.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 8 Prohibitions, Section 801 Prohibited Discharges, subsection 2 is deleted in its entirety and restated to read as follows:

**§ 23B-801 Prohibited Discharges.**

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2. Discharges that may be allowed based on the Township's finding that the discharge(s) do not significantly contribute pollution to waters of the Commonwealth are listed below:
- A. Discharges or flows from firefighting activities.
  - B. Discharges from potable water sources including water line flushing and fire hydrant flushing if such discharges do not contain detectable concentrations of total residual chlorine (TRC).
  - C. Non-contaminated irrigation water, water from lawn maintenance, landscape drainage and flows from riparian habitats and wetlands.
  - D. Diverted stream flows and springs.
  - E. Non-contaminated pumped groundwater and water from foundation and footing drains and crawl space pumps.
  - F. Non-contaminated HVAC condensation and water from geothermal systems.
  - G. Residential (i.e., not commercial) vehicle wash water where cleaning agents are not utilized.
  - H. Non contaminated hydrostatic test water discharges if such discharges do not contain detectable concentrations of total residual chlorine (TRC).

**Section 21.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 8 Prohibitions, Section 802 Prohibited Connections, subsection 1.B., is deleted in its entirety and restated to read:

§ 23B-802 **Prohibited Connections.**

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B. Any drain or conveyance connected from a commercial, industrial, residential or any other permitted land use to the separate storm sewer system which has not been documented in plans, maps or equivalent records and approved by the Township.

**Section 22.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 8 Prohibitions, Section 803 Roof Drains, is deleted in its entirety, re-titled “Section 803 Roof Drains and Sump Pumps” and restated to read as follows:

§ 23B-803 **Roof Drains and Sump Pumps.**

1. Roof drains and sump pumps shall discharge to infiltration areas or vegetative BMP's to the maximum extent practicable. Roof drains shall not be connected to streets, sanitary or storm sewers, or roadside ditches, except as provided in subsection 2.

2. When it is more advantageous to connect a roof drain or sump pump directly to a street, storm sewer or roadside ditch, the Township Engineer may authorize the connection provided it is protective of the public health, safety and the environment.

**Section 23.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township, Part 8 Prohibitions, is amended by adding a new section, Section 804 Alteration of BMPs, to read as follows:

§ 23B-804 **Alteration of BMPs.**

1. No person shall modify, remove, fill, landscape, or alter any stormwater BMPs, facilities, areas, or structures that were installed as a requirement of this Chapter **23B** without the express written authorization of the Township.

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2. No person shall place any structure, fill, landscaping or vegetation into a stormwater management BMP or within a drainage easement, which would limit or alter the functioning of the stormwater management BMP, without the express written authorization of the Township.

**Section 24.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township Part 9 “Right of Entry, Notification and Enforcement” is renamed Part 9 “Right of Entry, Enforcement and Penalties.”

**Section 25.** The Code of Lower Macungie Township, Chapter 23B, Perkiomen Creek Headwaters Act 167 Stormwater Management Ordinance of Lower Macungie Township Part 9 Right of Entry, Notification and Enforcement, Section 906 Appeals, is deleted in its entirety and restated as follows:

**§ 23B-906 Appeals.**

Any person aggrieved by any action of the Township or its designee related to the provisions of this Chapter **23B**, may appeal to the Lower Macungie Township Board of Commissioners.

**Section 26.** Nothing in this Ordinance or in Chapter **23B** of the Code of the Township of Lower Macungie, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter **23B** prior to the adoption of this amendment.

**Section 27.** If any sentence, clause, section, part or provision of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any part of the remaining ordinance provisions, sentences, clauses, sections. It is the intent of the Lower Macungie Township Board of Commissioners that



this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof, had not been included herein.

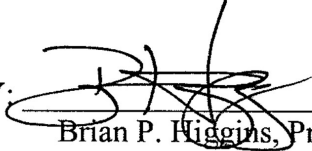
**Section 28.** This ordinance is effective immediately upon enactment.

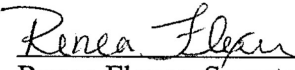
**ENACTED** and **ORDAINED** this 6<sup>th</sup> day of October, 2022.

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**BOARD OF COMMISSIONERS OF LOWER  
MACUNGIE TOWNSHIP**

BY:   
Brian P. Higgins, President

ATTEST:   
Renee Flexer, Secretary

	Motion	2nd	Yes	No	Abstain
R. Beitler			✓		
B. Higgins			✓		
M. Robert	✓		✓		
B. Shoemaker			✓		
R. Ward		✓	✓		

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