



Text File

Introduced: 11/21/2005

Bill No: 2005-1899, Version: 2

Committee: Committee on Finance & Budget

Status: Died due to expiration of legislative council session

Presented by Mr. Shields

AS AMENDED

Ordinance supplementing the Pittsburgh Code, Title Four: Public Places and Property, Article III: Sewers, by adding a new Chapter 433: Illegal Storm Water Connections, requiring disconnection of illegal surface storm water connections to city sanitary sewers; establishing provisions for dye testing to determine if storm or surface water is entering the sanitary sewer system; requiring evidence of compliance as a condition precedent to the issuance of City lien verification letters and authorizing the setting of fees for City lien verification letters; requiring evidence of compliance upon the sale, conveyance, transfer, inheritance or bequest of real property; granting authority to the Pittsburgh Water and Sewer Authority to enforce this ordinance.

WHEREAS, the City of Pittsburgh and the Pittsburgh Water and Sewer Authority entered a *Consent Order and Agreement* with the Pennsylvania Department of Environmental Protection and the Allegheny County Health Department on or about January 29, 2004; and

WHEREAS, the Consent Order and Agreement mandates, among other things, that the City of Pittsburgh promulgate an ordinance regarding the dye testing of surface storm water connections to the sanitary sewer system owned by the City of Pittsburgh and leased and operated by the Pittsburgh Water and Sewer Authority pursuant to the *Capital Lease Agreement* entered into by the City of Pittsburgh and the Pittsburgh Water and Sewer Authority, effective July 27, 1995; and

WHEREAS, the aforesaid *Consent Order and Agreement* specifically requires at Paragraph 7(d) thereof:

By November 1, 2004, the Municipality and PWSA shall:

- (i) institute and enforce an ordinance or regulations prohibiting connections of surface storm water to their sanitary sewer system; and
- (ii) institute and enforce a sewer use ordinance or regulations which require(s) at the time of all property sales within the City of Pittsburgh, a visual inspection and dye test of items referenced in this Paragraph (7) to identify illegal connections. The ordinance or regulations shall require the removal of the illegal connections prior to the sale of the property.

and

WHEREAS, the City of Pittsburgh has determined it is reasonable and necessary to reduce the inflow of surface storm water into the sanitary sewer system; and

WHEREAS, the City of Pittsburgh has determined that it is reasonable and necessary to establish a compliance program effective upon the sale or conveyance of any real estate located within the City of Pittsburgh; and

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

WHEREAS, the City has determined that enforcement of this Ordinance by PWSA is in accordance with the purposes of PWSA in constructing, improving, maintaining and operating the City sewer system; and

WHEREAS, the City has determined that enforcement of this Ordinance by PWSA is in accordance with the purposes of the ACHD and the Pennsylvania Department of Environmental Protection's mandate to the City and to PWSA to institute and enforce inspection of, by dye-testing, and prohibition of, Illegal Surface Storm Water Connections;

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1.

CHAPTER 433: ILLEGAL SURFACE STORM WATER CONNECTIONS

- § 433.01 Definitions
- § 433.02 Prohibitions
- § 433.03 Disconnection of illegal surface storm water connections
- § 433.04 Transfers of real property
- § 433.05 Temporary evidence of compliance
- § 433.06 Rejection of application
- § 433.07 City Lien Verification Letter
- § 433.08 PWSA resolutions
- § 433.09 Access and inspection
- § 433.10 Penalties
- § 433.11 Notice of violation
- § 433.12 Notice of appeal of notice of violation
- § 433.13 Enforcement measures after appeal
- § 433.14 Public Nuisance
- § 433.15 Injunctive and other relief
- § 433.16 Cumulative remedies
- § 433.17 Effective date
- § 433.18 Conflicts

§ 433.01. DEFINITIONS.

When used herein, the following words shall have the following meanings:

- a. **ACHD:** The Allegheny County Health Department.
- b. **Applicant:** Defined in Section 4.a. below.
- c. **City:** The City of Pittsburgh.
- d. **City Lien Verification Letter:** A written letter from the City to a Person (defined below) regarding any liens, claims, and/or taxes due the City from said Person.
- e. **Dye Test:** Any commonly accepted plumbing test whereby a nontoxic, non-staining dye is introduced into the surface storm water collection system of real property to determine if any surface storm water is entering the City's sanitary sewer system. The term "Dye Test" shall include any other reasonable and appropriate testing methodology(ies) (excluding the use of smoke testing to detect roof leaders) acceptable to PWSA to determine if any surface storm water is entering the City's sanitary sewer system.
- f. **Evidence of Compliance:** An official written letter or statement from PWSA confirming that it has on file a written report or statement from a Registered Plumber (defined below) certifying there are no Illegal Surface Storm water Connections into the City's sanitary sewer system located on a property.
- g. **Illegal Surface Storm Water Connections:** Connections to the City's sanitary sewer system that allow surface storm water to be discharged into the City's sanitary sewer system from sources including, but not limited to, downspout drainage, roof drainage, and areaway drainage.
- h. **Person:** Any natural person, partnership, association, authority, syndicate, firm, corporation, developer, contractor, government, or other entity recognized by law as the subject of rights and duties.
- i. **PWSA:** the Pittsburgh Water and Sewer Authority.
- j. **Registered Plumber:** A plumber registered and certified by the ACHD.
- k. **Temporary Evidence of Compliance:** A temporary written report/statement from PWSA issued pursuant to Section 5 of this ordinance.

§ 433.02 PROHIBITIONS.

- a. From and after the effective date of this Ordinance, it shall be unlawful for any Person to construct, install, maintain, repair, operate, use, or allow an Illegal Surface Storm Water Connection on real estate that they own, lease, occupy, or possess. This prohibition expressly includes, without limitation, Illegal Surface Storm Water Connections made prior to the effective date of this Ordinance, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- b. From and after the effective date of this Ordinance, it shall be unlawful for any Person to sell, convey or transfer real property located within the City on which a building or improvement exists without first obtaining and delivering to the purchaser an Evidence of Compliance or Temporary Evidence of Compliance from PWSA

as required under this Ordinance.

§ 433.03 DISCONNECTION OF ILLEGAL STORM WATER CONNECTIONS.

Illegal Surface Storm Water Connections must be disconnected from the City's sanitary sewer system and redirected, as appropriate, to a separate storm sewer. Disconnection shall mean that the Illegal Surface Storm Water Connection is disconnected and removed from the City's sanitary sewer system, and that access to the sanitary sewer system at that location shall be permanently capped and sealed. The disconnection of the Illegal Surface Storm Water Connection shall be certified by a Registered Plumber on a form approved by PWSA. Connection of the Illegal Surface Storm Water Connection to the City's separate storm sewer system is subject to the prior approval of PWSA. Prior to the commencement of any work on the disconnection of an Illegal Surface Storm Water Connection, all necessary and required building permits, street opening permits, sidewalk opening permits, and other approvals and permits that may be necessary to accomplish the disconnection shall be acquired. In no event is water to be discharged from the Illegal Surface Storm Water Connection upon or across public or private sidewalks and public or private streets, or discharged onto adjacent property.

§ 433.04 TRANSFERS OF REAL PROPERTY.

a. Any Person selling, conveying or transferring real property located within the City shall apply for Evidence of Compliance on a PWSA-approved form at least fourteen (14) days prior to the date of closing and pay such fee as PWSA may establish from time to time by resolution. Prior to the submission of such form, such Person, hereinafter termed the Applicant, shall have a Dye Test performed by a Registered Plumber at the Applicant's expense on the real property to be sold, conveyed or transferred. Upon completion of the Dye Test, the Registered Plumber hired by the Applicant shall then complete the appropriate section of PWSA-approved form confirming that the property has been Dye Tested and certifying the results of such test. In the event the Registered Plumber certifies that there are no Illegal Surface Storm Water Connections on the real property to be sold, conveyed or transferred, PWSA shall issue the Evidence of Compliance within seven (7) days of PWSA's receipt of the properly completed form. If the Dye Test reveals the existence of an Illegal Surface Storm Water Connection, the Registered Plumber shall certify that there are Illegal Surface Storm Water Connections on the real property, and the form shall be submitted by the Applicant to PWSA. PWSA shall not issue the Evidence of Compliance until the Illegal Surface Storm Water Connection has been disconnected and removed as required by Section 3 above, and the correction of the Illegal Surface Storm Water Connection has been certified by a Registered Plumber. PWSA shall issue the Evidence of Compliance within seven (7) days of PWSA's receipt of the properly completed form describing the disconnection and removal of the Illegal Surface Storm Water Connection and the certification of the correction by the Registered Plumber.

b. This Ordinance shall apply to any transfer of property, whether by sale, gift, exchange, inheritance, or bequest or deed in lieu of mortgage foreclosure, except that this Ordinance shall not apply where a joint owner with right of survivorship or a tenant by the entireties acquires full ownership of the property upon the death of the co-owner.

c. Valid Evidence of Compliance shall expire three (3) years following the date of issuance of the Evidence of Compliance. If any additions to the property within the three (3) year period, certification that the addition has no illegal Storm Water Connections shall be provided by a Registered Plumber.

§ 433.05 TEMPORARY EVIDENCE OF COMPLIANCE.

In the event an Illegal Surface Storm Water Connection is discovered pursuant to Section 4, and the necessary remedial correction of the condition would require a length of time to perform such that it would create an undue hardship on the Applicant to perform the same prior to the date of closing on the sale, conveyance or transfer of the property, the Applicant may apply to PWSA for Temporary Evidence of Compliance provided there is strict compliance with all the following conditions:

1. PWSA is provided with a bona fide, executed contract between the Applicant and a Registered Plumber requiring the Registered Plumber to complete the necessary remedial work to correct and/or disconnect and remove the Illegal Surface Storm Water Connection, and granting PWSA the right and power to enforce the contract as a third-party beneficiary;
2. Cash security in the amount of 110% of the price of the contract described in Section 5.1. above is deposited with PWSA, to be held by PWSA in a non-interest bearing account. Cash security shall be limited to cash, certified checks and treasurer's checks.
3. A written acknowledgment and notarized agreement under which the purchaser, grantee, transferee, or devisee agrees to be responsible for all cost overruns related to the remedial work together with a grant to PWSA of a license to enter upon the property to complete the work at the expense and cost of the purchaser should the contractor or the Applicant default in the agreement. PWSA may establish a reasonable period of time for the said corrective work to be completed, taking into consideration the extent of the work required, and the conditions then existing. The temporary Evidence of Compliance shall be effective for no more than sixty (60) days, and the expiration date of the Temporary Evidence shall be noted thereon. If, upon expiration of the Temporary Evidence of Compliance, all remedial work has not been completed and Evidence of Compliance has not been issued, the cash security deposited with PWSA shall be forfeited and PWSA may use such security to have the required remedial work completed. Any cost overrun exceeding the cash security posted with PWSA shall remain the sole and exclusive liability of the purchaser and constitute a recordable lien against the real estate.

§ 433.06 REJECTION OF APPLICATION.

PWSA may reject an application for Evidence of Compliance or for Temporary Evidence of Compliance whenever, in its sole judgment, the requirements of this Ordinance have not been met.

§ 433.07 CITY LIEN VERIFICATION LETTER.

A request to the City for a City Lien Verification Letter must be accompanied by a valid Evidence of Compliance Certificate and/or a valid Temporary Evidence of Compliance certificate issued no less than thirty (30) days prior to the date the letters are requested. The City may by regulation establish the fee for such Letter.

§ 433.08 AUTHORITY RESOLUTIONS.

PWSA may, by Resolution, adopt any or all of the following in order to accomplish the purposes of this Ordinance:

- a. Establish the application form, the purchaser acknowledgement form, the Registered Plumber's certificate forms, and the form of the Evidence of Compliance certificate and Temporary Evidence of Compliance, and the fee(s) for issuance of the same.
- b. Establish the procedures and guidelines for the retention, release, and/or payment of any security fund held by PWSA under and pursuant to Section 5.2. above.
- c. Establish any other forms, fees, procedures and/or guidelines necessary to fulfill the objectives and purposes of this Ordinance.

§ 433.09 ACCESS AND INSPECTION.

PWSA shall be permitted as necessary to enter and inspect real properties at reasonable times to perform Dye Testing and related inspections to determine compliance with this Ordinance.

- a. If a property has security measures in force which require proper identification and clearance before entry into its premises, upon reasonable notice by PWSA, the owner or possessor shall make the necessary arrangements to allow access by representatives of PWSA.
- b. The owner and/or possessor of the property shall allow PWSA reasonable access to all parts of a property necessary to the Dye Testing and related inspections of the property. PWSA shall have the right to set up on any property such devices as are necessary in the opinion of PWSA to conduct Dye Testing and related inspections of the property.
- c. Any temporary or permanent obstruction to safe and easy access to the property to be Dye Tested, or on which related inspections shall be performed, shall be promptly removed by the owner of the property at the written or oral request of PWSA and shall not be replaced until such Dye Testing is completed and/or any violations of this Ordinance are corrected and such corrections are certified by a Registered Plumber. The costs

of clearing such access shall be borne by the property owner.

d. PWSA may provide reasonable notice of the Dye Testing and related inspections of a property or properties through written notice or publication. However, except as provided in Section 9.a., PWSA is not required to provide such notice prior to performing Dye Testing or related inspections on a property. Unreasonable delays in allowing PWSA access to a property is a violation of this Ordinance.

e. If PWSA has been refused access to any part of a property on which an Illegal Surface Storm Water Connection is suspected, and PWSA is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to Dye Test, inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then PWSA may seek issuance of a search warrant from any court of competent jurisdiction.

§ 433.10 PENALTIES.

Any Person violating any provision of this Ordinance shall, upon conviction thereof, be subject to a penalty up to the maximum amount provided by Section 101.09 of the Pittsburgh Code of Ordinances. Every calendar day after the Person has received written notice of any violation of this Ordinance, and on which the violation continues, shall constitute a separate violation of this Ordinance and the Person shall be subject to pay the fine specified in Section 101.09 for each day the property remains in violation.

§ 433.11 NOTICE OF VIOLATION.

Whenever PWSA finds that a violation of this Ordinance has occurred, PWSA may order compliance by written notice of violation sent to the owner and/or possessor of the property, at the address of the property or at such other address for the owner and/or possessor as maintained in City or County of Allegheny records.

a. The notice of violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this Ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the Person to whom the notice of violation is directed; and

(6) A statement that the determination of violation may be appealed to the Pittsburgh Municipal Court by filing a written notice of appeal within thirty (30) days of service of notice of violation.

b. Such notice of violation may require without limitation:

- (1) The performance of Dye Testing, monitoring, analyses, and reporting;
- (2) The elimination, disconnection, and removal of the Illegal Surface Storm Water Connection; and
- (3) That violating discharges, practices, or operations shall cease and desist.

§ 433.12 APPEAL OF NOTICE OF VIOLATION.

Any Person receiving a Notice of Violation may appeal the determination of violation made by PWSA. The notice of appeal must be filed within thirty (30) days from the date of the Notice of Violation. Hearing on the appeal before the Pittsburgh Municipal Court shall take place within thirty (30) days from the date of the filing of the notice of appeal.

§ 433.13 ENFORCEMENT MEASURES AFTER APPEAL.

a. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within thirty (30) days after the decision of the Municipal Court upholding the determination of violation made by PWSA, then the representatives of PWSA may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation, disconnect and remove the Illegal Surface Storm Water Connection, and/or restore the property. It shall be unlawful for any Person, owner, agent, or occupier in possession of any premises to refuse to allow PWSA or its designated contractor(s) to enter upon the premises for the purposes set forth above. The costs of the measures taken by PWSA shall constitute a recordable lien against the property.

b. Where correction of the violation cannot be made in accordance with the Notice of Violation or, in the case of an appeal, within thirty (30) days of the decision of the Municipal Court upholding the determination of violation, upon proof to PWSA of a contract for performance of the correction work, or other document satisfactory to PWSA showing good faith commencement of correction of the violation, abatement by PWSA may be delayed up to a maximum of sixty (60) days after the Notice of Violation or, in the case of appeal, for a maximum of sixty (60) days after the decision of the Municipal Court upholding the determination of violation made by PWSA.

§ 433.14 PUBLIC NUISANCE.

In the event a violation(s) of this Ordinance constitutes an immediate danger to public health or public safety,

PWSA is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violations, disconnect and remove the Illegal Surface Storm Water Connection, and/or restore the property. The costs of the measures taken by PWSA shall constitute a recordable lien against the property.

§ 433. 15 INJUNCTIVE AND OTHER RELIEF.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of the provisions of this Ordinance is a threat to public health, safety, welfare, and the environment and is declared and deemed to be a nuisance, and PWSA may seek abatement thereof by injunctive or other equitable relief as provided by law.

§ 433. 16 CUMULATIVE REMEDIES.

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable Federal, Commonwealth or local law and PWSA may seek cumulative remedies. PWSA may recover attorney's fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

§ 433. 17 EFFECTIVE DATE.

This Ordinance shall take effect on ~~01/01/2005~~, 2005 90 days after the date of the Mayor's signature, and shall apply to any transfer, conveyance, gift, sale, or devise on or after that date, without regard to the date of any agreement or contract under which the transfer, conveyance, gift, or sale occurred.

§ 433. 18. CONFLICTS.

Any Ordinance or part of an Ordinance conflicting with the provisions of this Ordinance shall be and the same are hereby repealed to the extent of such conflict.