

ORDINANCE NO. 7-07

AN ORDINANCE OF THE TOWNSHIP OF McKEAN, COUNTY OF ERIE, COMMONWEALTH OF PENNSYLVANIA, REQUIRING OWNERS OF PROPERTY ACCESSIBLE TO THE 2006 ROUTE 99 WATER EXTENSION TO PAY ALL APPLICABLE TAPPING FEES AND MONTHLY DEBT SERVICE CHARGES, WITH THE OPTION TO CONNECT WITH AND USE THE PUBLIC WATER SYSTEM, AUTHORIZING McKEAN TOWNSHIP SUPERVISORS TO MAKE SUCH CONNECTION AND RECOVER THE COST THEREOF IN CASE OF NEGLECT OR REFUSAL OF OWNERS TO DO SO, PROVIDING FOR INSPECTION OF THE CONNECTIONS AND PENALTIES, AND THE FILING OF LIENS.

WHEREAS, it is hereby declared to be necessary and proper for the preservation of the public health, welfare, and safety of all citizens of the Township that a public water supply and a water supply system be provided to certain areas of the Township; and

WHEREAS, in order to facilitate the construction of a public water system, it is necessary and proper to require mandatory payment of all monthly debt service charges, with the optional connection to the system of those properties accessible thereto; and

WHEREAS, in order to facilitate connection to and financing of a public water system, a portion of the costs thereof should be collected through front-foot assessments, and/or tap fees, and/or a combination of both.

NOW, THEREFORE, be it remembered that, upon motion duly made and seconded, it was and is hereby ordained and enacted by majority vote of the Board of Supervisors of the Township in lawful meeting assembled, as follows:

Section 101. Short Title

This ordinance shall be known and may be cited as the “2006 Route 99 Water Extension Connection Ordinance”.

Section 102. Definitions

The following words and phrases when used in this ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Accessible to the public Water Supply System”—any property that 1) contains a Water Main Line or Water Lateral connected to a Water Main Line, or 2) has a boundary line that adjoins or abuts a public right of way or water easement that contains a Water Main Line and/or a Water Lateral connected to the Water Main Line, regardless of whether the said Water Main Line or Water Lateral in the public right of way or water easement is located on the same side or on the

opposite side of the road surface or carpath as the adjoining or abutting property, and provided that the said water main line or water lateral abuts or extends into the area of the right of way or water easement located between an extension of the property lines into and perpendicular to the right of way or water easement (i.e., abuts or extends into the right of way or water easement located in front of, along side of, or behind the property, as applicable). Notwithstanding the foregoing, a property shall not be considered to be “accessible to the public Water Supply System” unless any structure on the property that is connected to a water supply system, or such proposed structure, is located or is to be located within two hundred (200) feet of the public right of way or water easement containing a Water Main Line or Water Lateral.

“Applicant”—The owner of the property or, where applicable, the lessee of the property accorded authority under a lease to apply for a permit which pertains to the Water Supply System.

“Authority” — The McKean Township Water Authority, as originally organized and as presently or hereafter constituted, which was formed, created, and brought into legal existence by the Board of Supervisors of the Township of McKean under and pursuant to the Municipality Authorities Act of 1945, 53 Pa.C.S.A. § 5601 *et seq.*, as amended (the “Act”), and to which has been granted the power to undertake the specific projects of water, water systems or parts thereof. For purposes of this Ordinance, the term “Authority” shall mean and include the duly constituted and appointed officials thereof. Also, for purposes of this Ordinance, the term “Authority” shall mean and include its lessees, successors and/or assigns.

“Connect and/or connection”—Any connection or hook-up or joining to the Water Supply System. The terms “connect and/or connection” shall include and extend to any alteration, modification or termination/disconnection of any existing connection or hook-up or joining to the Water Supply System, unless expressly provided otherwise in this Ordinance.

“Consulting Engineer”—The registered professional engineer employed by the Township or the Authority to consult on matters regarding the Water Supply System within the Township, or any member of his or her staff.

“Equivalent Domestic Unit” or “EDU”—The estimated amount of consumption of water equivalent to 72,000 gallons per year.

“Erie City Water Authority” or “ECWA”—The water authority duly created, organized, and brought into existence by the City of Erie, Erie County, Pennsylvania, pursuant to the Municipality Authorities Act.

“Lot”—A part of a subdivision or a parcel of land used as a building site, mobile home park or mobile home site, recreation or other purposes or intended to be used for building, mobile homes, recreational or other purposes, whether immediate or future, which would not be further subdivided. Whenever a lot is used for condominiums, multi-family dwellings, mobile home parks, or for multi-tenant recreational, commercial, or industrial purposes, the lot shall be deemed to have been subdivided into an equivalent number of individual residential, recreational, commercial, or industrial lots, as applicable.

“May”—Permissive, not mandatory.

“Service Line”—The water line running from the Water Supply System water distribution line to the location of the meter in the building on a parcel of land that is accessible to the public Water Supply System. A “Service Line” is also known as a “Water Lateral.”

“Shall”—Mandatory obligation without exception.

“Subdivision”—The division or redivision of a lot, tract or other parcel of land into two or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines. The enumerating of lots shall include as a lot that portion of the original tract or tracts remaining after other lots have been subdivided therefrom.

“Township”—Township of McKean, County of Erie, Commonwealth of Pennsylvania. For purposes of this Ordinance, the term “Township” shall mean and include the duly constituted and elected officials thereof.

“2006 Route 99 Water Extension”—The water system constructed and owned by the ECWA pursuant to the 2006 Route 99 Water Extension Agreement between the Authority, the Township, the Borough of McKean, and the Municipal Authority of Middleboro, all of Erie County, Pennsylvania, dated November 16, 2006, and attached hereto as Exhibit A.

“Water Lateral”—see “Service Line.”

“Water Main Line”—any water distribution line that is not a “Service Line.”

“Water Meter”—a device for measuring the quantity of water used to be installed by the Authority or Township on the premises of a property accessible to the public Water Supply System.

“Water Supply System”—The publicly owned acquisition, purification, storage, and distribution system constructed in the Township by and owned by ECWA, including wells, pumps, purification systems, water distribution “main” lines, fire hydrants, valves, buildings, and other fixtures and equipment appurtenant thereto, and all necessary lands, easements, and rights of way, or any parts thereof, as identified in the attached Exhibit A.

Section 103. Exclusive Source of Water

For those properties whose owners choose to connect to the Water Supply System, or those properties that may in the future be mandated to connect to the Water Supply System, the Water Supply System to be constructed within the Township shall provide the exclusive source of potable water for human consumption within the area described in Exhibit A, and owners of property that is accessible to the public Water Supply System may or shall, as set forth below, connect with and use such Water Supply System in the manner herein provided, except that industries and farms which have their own supply of water may continue to use the same for uses

other than human consumption, but such industries and farms may or shall ,as set forth below, connect with and use the Water Supply System as the exclusive source of potable water for human consumption. Once a property is connected to the Water Supply System, it shall remain so connected, and the Water Supply System shall remain the exclusive source of potable water for human consumption for that property.

Section 104. Optional Connection Permitted or Mandatory Connection Required

A. Optional Connection Permitted. Each owner of any property containing a house, building, or other structure used for human occupancy, employment, recreation, or other purpose situated in the area described in Exhibit A, regardless of whether or not such property is accessible to the public Water Supply System, may, at his own expense, upon payment of all tapping, connection, facilities, inspection, and other fees, connect to the Water Supply System in accordance with this Ordinance, and thereafter shall pay such water rents, fees, debt service, and/or other charges as are or shall be set forth pursuant to Section 108 below.

Any owner whose property is accessible to the Public Water System who chooses not to connect to the Water Supply System shall be permitted to do so providing that such owner pays all applicable tapping fees and pays a monthly debt service charge per EDU as set forth in Section 108 below. In the event that the owner fails to pay all applicable tapping fees or becomes delinquent in the payment of the monthly debt service charges beyond sixty (60) days after the due date for payment of such monthly debt service charges, the Township shall issue a mandatory connection notice as set forth in Section 104(B) below, and the said owner shall no longer have the option not to connect to the Water Supply System.

B. Mandatory Connection Required. Upon receipt of a mandatory notice to connect to the Water Supply System, each owner of any property containing a house, building, or other structure used for human occupancy, employment, recreation, or other purpose situated in the area described in Exhibit A that is accessible to the public Water Supply System shall, at his own expense, connect to the Water Supply System in accordance with the provisions of this Ordinance within sixty (60) days after the date of official notice to do so given in the manner provided by law, and disconnect the said house, building, or other structure from each and every other water source, supply, and/or system.

C. New Construction and Change of Use

1. The option to connect to or not connect to the Water Supply System shall only apply to those houses, buildings, and other structures and uses thereof in existence or under construction at the time of the effective date of this Ordinance. Any house, building, or other structure whose use is changed to a more intensive use, or any house, building, or other structure that is constructed on or delivered to a property after the effective date of this Ordinance shall not have the option not to connect to the Water Supply System, and shall be subject to the Mandatory Connection provisions set forth in Section 104(B) above and elsewhere in this Ordinance.

2. In the event that a property owner applies for a building permit for new construction or a zoning permit for change of use after the effective date of this Ordinance but before the property becomes “accessible to the public Water Supply System,” the permit officer or building code official shall not issue the building permit or zoning permit unless the owner pays all applicable tapping, connection, inspection, and other fees. When the property becomes accessible to the public Water Supply System, the owner shall connect the structures. In the event the property owner does not connect the structures when the property becomes accessible to the public Water Supply System, the Township shall issue a notice to connect as set forth in Section 104(B) above.

3. In the event that the property owner applies for a building permit for new construction or a zoning permit for change of use after the completion of the construction and installation of the water main line or service line that makes or will make the proposed structures accessible to the public Water Supply System, the permit officer or building code official shall not issue the building permit or zoning permit unless the owner pays all applicable tapping, connection, inspection, and other fees. The owner shall connect the structures to the public water supply system subject to the inspection and approval provisions of Section 106 and other applicable sections of this Ordinance.

Section 105. Failure to connect; enforcement actions

A. When an owner of any property set forth in Section 104 fails, refuses or neglects to connect with and/or use the Water Supply System prior to occupancy or for a period of sixty (60) days after notice to do so has been served by the Board of Supervisors, either by personal service or by registered mail, the Board of Supervisors or its agents may enter the property and construct the connection. Such connection may be effected at any time following the expiration of the said sixty (60) days or unlawful commencement of occupancy without any further notice to the owner being required.

1. Upon completion of all work necessary to effectuate the connection with the Water Supply System, the Board of Supervisors shall send an itemized invoice of the cost of construction to the owner of the property to which the connection has been made, which invoice shall be payable immediately. Such invoice shall constitute a claim and assessment as defined in the general municipal law of the Commonwealth of Pennsylvania, as the same may be amended from time to time, and shall constitute a municipal claim from the date of the said invoice. Simple interest on the unpaid invoice shall accrue on sums not paid within thirty (30) days after the date of the invoice at the rate of ten percent (10%) per year from the date of the invoice.

2. If the owner fails to pay the invoice as required, then the Board of Supervisors may file a municipal lien for the cost of the construction, together with interest, costs and reasonable attorney fees, within six (6) months of the date of completion of the connection. Any such municipal lien filed shall be subject in all respects to the general law providing for the filing and recovery of municipal liens and claims.

B. When the Township or Authority determines that a violation of this Ordinance, of the rules and regulations governing the use and operation of the Water Supply System, or of any water permit or any damage to the Water Supply System is threatened or has occurred, the Township or Authority may take one or more of the following actions, none of which shall be deemed mutually exclusive:

1. Issue an order to cease and desist any such violation and direct the violator to take all action necessary to come into compliance or to take appropriate remedial preventive action in the event of a threatened violation.

2. Require the person to submit a detailed time schedule setting forth the specific proposed actions to prevent or correct a violation, in which event the Township and/or the Authority may issue an implementation schedule to the person containing or modifying such specific actions and time schedule or requiring other actions by such date as the Township and/or the Authority deems appropriate.

3. Issue an administrative enforcement notice directing the person to cease or correct a violation by a date established in such notice.

4. To any governmental entity or agency having issued any applicable permit, report a violation thereof and request appropriate enforcement.

5. Revoke the water permit.

6. Proceed on the certificate of insurance so as to remedy the violation, if possible, and collect all damages, fees, and costs, including reasonable attorney fees and costs, sustained by reason of the violation or by reason of the remediation of the violation.

7. Issue enforcement notices citing violation of this Ordinance or of the rules and regulations governing the use and operation of the Water Supply System or of the water permit.

8. Commence and prosecute actions for enforcement of this Ordinance and/or collection of fines, costs, damages, and reasonable attorney fees and costs.

9. Institute and maintain one or more lawsuits to enforce this Ordinance, the rules and regulations governing the use and operation of the Water Supply System, and/or the water permit.

Section 106. Permits Required; Standards Authorized

A. No connection to the Water Supply System shall be effected, altered, modified or disconnected unless the owner of the subject property shall first apply for and obtain a written permit from the Township. No person shall excavate, uncover, back-fill, use, alter, make a connection with or an opening into, or in any other way whatsoever disturb the Water Supply

System without first obtaining a written permit issued from the Township. As used in this Section, the terms “connection” and “disconnected” shall include all connections to the Water Supply System.

B. Each owner of any property as set forth in Sections 104 and 106(A) of this Ordinance shall make application in writing to the Township for a permit to excavate, uncover, back-fill, disturb, make, alter or terminate a connection to the Water Supply System. Such application shall be made to the Township on such forms as are adopted by the rules and regulations governing the use and operation of the Water Supply System.

C. Such application shall be signed by the owners of the property in question, unless the said owners provide to the Township a writing giving authorization to another person to make application and further acknowledging that the said owners have sole and exclusive responsibility for compliance with this Ordinance, the rules and regulations governing the use and operation of the Water Supply System, and any water permit issued.

D. In addition to other requirements as may be established by the rules and regulations governing the use and operation of the Water Supply System, such application for water permit shall set forth:

1. The name and mailing address of the subject property owners.
2. The address of the subject property.
3. A description of the subject lot, including without limitation the subdivision, if any, and the lot’s assigned number in said subdivision.
4. The Erie County and/or Township of McKean index number(s) assigned to the subject property and/or lot.
5. The street name where connection is to be made, altered, or disconnected to or from the Water Supply System.
6. The name and address of the contractor who shall perform the work.
7. The intended use of the subject property after connection.

E. No permit shall be issued without the applicant first obtaining a certificate of insurance with the Township named as additional insured due to the consequence of the said work.

F. Each applicant for a water permit shall, upon submission of an application, pay in full all filing, review, inspection, tapping and other fees and charges as are established from time to time by the rules and regulations governing the use and operation of the Water Supply System. Any developer’s agreement or private service agreements required or administered by the Authority or the Township in connection with such application shall be concluded prior to issuance of any water permit. Any sums due as tapping fees or as reimbursements to a developer who

constructed water mains to which connection is requested shall be paid in full prior to issuance of the water permit.

G. No water permit shall be issued until and unless there has been constructed within the adjacent street, highway, easement or right-of-way the necessary Water Supply System facilities to which such connection can be effected; provided, however, that the Township or Authority shall have discretion to determine otherwise subject to such conditions and contingencies as it shall then impose.

H. No water permit shall be issued unless all requirements of this Ordinance and of the rules and regulations governing the use and operation of the Water Supply System have been fully and strictly complied with.

I. If an application for water permit is denied, then the applicant shall be provided with written reasons for such denial.

J. A water permit shall authorize and shall be evidence of the authorization to perform only that work for which application was made and approved. An issued water permit shall be valid for one (1) year from date of issuance and shall expire automatically on such anniversary date, unless thirty (30) days prior to its expiration the applicant submits a written request for extension showing good cause of such extension of time and the same has been approved in writing by the Township.

K. The ECWA and/or the Authority shall promulgate and adopt any and all standards, conditions, policies, procedures, rules and regulations, including applicable fees, as it deems necessary to issue permits and regulate connections and the use of the Water Supply System, which, upon adoption, shall have the legal affect of imposing strict compliance therewith by all persons. By the adoption of this Ordinance, the Township hereby adopts and incorporates into this Ordinance all such standards, conditions, policies, procedures, rules and regulations, including applicable fees, as from time to time are promulgated and adopted by the ECWA and/or the Authority.

Section 107. Authority to Test

The Township and the ECWA and/or the Authority may conduct such investigations and tests as are necessary to enforce this Ordinance and rules and regulations governing the use and operation of the Water Supply System, and the officials, appointees, employees and agents of the ECWA and/or the Authority and/or Township are hereby authorized to enter upon any property for the purpose of taking samples, obtaining information or conducting surveys or investigations relating to such enforcement. Inspections are authorized for any purpose related to proper enforcement and administration of this Ordinance and rules and regulations governing the use and operation of the Water Supply System, including but not limited to ensuring proper connection with and use of the Water Supply System, and identifying and disconnecting unauthorized or unlawful connections or use of the Water Supply System. Policies and procedures pertaining to investigations, tests and surveys shall be as established in the rules and regulations governing the use and operation of the Water Supply System.

108. Fees

A. There are hereby levied and imposed upon all persons owning any property within the area described in Exhibit A and accessible or hereafter accessible to the public Water Supply System upon which an occupied building is now erected or hereafter erected such fees, rates and other charges as the ECWA and/or the Authority shall fix, alter, and charge from time to time as provided by this Ordinance, by other applicable law and by the rules and regulations promulgated thereunder. It is expressly authorized that such fees, rates, monthly debt service charges, and other charges shall include those tap fees assessed against properties that connect to the Water Supply System, as the ECWA and/or the Authority shall fix, alter, and amend from time to time.

B. Pursuant to the provisions of the Municipality Authorities Act and the rules and regulations promulgated thereunder, the ECWA and/or the Authority shall fix, alter, charge, and collect fees, rates, monthly debt service charges, and other charges in the area served by the Water Supply System at reasonable and uniform rates to be determined exclusively by the ECWA and/or the Authority from time to time by duly adopted Resolutions for the purpose of providing for the payment of the expenses of the ECWA and/or the Authority, the construction, improvement, repair, maintenance and operation of the Water Supply System, and other facilities of the ECWA and/or the Authority relating to, connected to and vital to the Water Supply System. Without limitation and pursuant to the provisions of the Municipality Authorities Act and the rules and regulations promulgated thereunder, such fees, rates, monthly debt service charges, and other charges may include: charges for the cost of construction of the water mains; enumerated fees to property owners who desire to or are required to connect to the Water Supply System, which fees may include connection fees, customer facilities fees and tapping fees; monthly or quarterly user fees and/or debt service charges; charges for the cost of improvement, repair, maintenance and operation of the Water Supply System; and charges for the cost of improvement, repair, maintenance and operation of other properties of the ECWA and/or the Authority relating to, connected to, and vital to the Water Supply System.

C. Notwithstanding any reason whatsoever, no person shall be relieved or otherwise exempt from timely payment in full of any fee, rate, monthly debt service charge, or other charge that the ECWA and/or the Authority shall fix, alter or charge pursuant to the provisions of this Ordinance and of the Municipality Authorities Act and the rules and regulations promulgated thereunder.

D. The ECWA, the Authority and/or the Township and their employees, lessees, servants, agents, successors and/or assigns shall take and perform or cause to be taken and performed all necessary action to collect and enforce a person's duty to pay in full the amount of any fee, rate, monthly debt service charge, or other charge that the ECWA and/or the Authority shall fix, alter or charge pursuant to the provisions of this Ordinance and of the Municipality Authorities Act and the rules and regulations promulgated thereunder. Such action may include, without limitation, the filing of a municipal lien and the execution thereupon.

Section 109. Violations and penalties

A. Enforcement proceedings and penalties for any violation of this Ordinance shall be as authorized by law and shall be in addition to any other actions and legal proceedings that may be initiated by either the Township or the ECWA and/or the Authority.

B. Without limiting the generality of the foregoing subsection A, the provisions of this Ordinance are declared to be for the health, safety, and welfare of the citizens of the Township, and the enforcement of this Ordinance shall be by action brought before a Magisterial District Judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, and the solicitor may assume charge of the prosecution without the consent of the District Attorney as required under Pennsylvania Rules of Criminal Procedure No. 454(C). Any person violating any provision, whether in part or in whole, of this Ordinance, upon conviction before any Magisterial District Judge of Erie County, shall be required to pay a criminal fine in the amount of One Thousand Dollars (\$1,000.00) per violation and shall be imprisoned to the extent allowed by law for the punishment of summary offenses. A separate offense is hereby deemed to arise for each day or portion thereof in which a violation is found to exist or for each section of the Ordinance which is found to have been violated. Each occupied building shall constitute a separate and distinct unit under the provisions of this Ordinance, and the person owning the same who violates any provision of this Ordinance, whether in part or in whole, shall be subject to the enforcement proceedings and penalties set forth herein, notwithstanding the fact that the owner thereof may have been permitted to use a single common connection to connect two (2) or more such buildings to the Water Supply System.

C. In addition to any other action authorized by law and/or by this Ordinance, this Ordinance and the violation of any provision of it, whether in part or in whole, may be enforced through an action in equity brought in the Court of Common Pleas of Erie County, Commonwealth of Pennsylvania.

D. In any administrative, criminal, or civil action for the enforcement of this Ordinance and/or in any action to collect fines for any violation of any provision of this Ordinance, whether in part or in whole, the Township and/or the ECWA and/or the Authority shall be entitled to recover all expenses, losses, and damages occasioned by the violation(s), together with all filing and other litigation costs, and all reasonable attorney fees and costs incurred thereby.

Section 110. Implementation

The taking and performance of any and all additional action deemed necessary and appropriate to implement the provisions and intent of this Ordinance are hereby directed, authorized and empowered to be taken and performed.

Section 111. Constitutionality

The provisions of this Ordinance shall be severable, and if any provision, sentence, clause, section or any other part of this Ordinance is finally determined by a court of competent jurisdiction to be unconstitutional, illegal, or invalid, then such unconstitutionality, illegality, or invalidity shall not affect or impair the constitutionality, legality, or validity of any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance. It is hereby declared as the legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid parts not been included.

Section 112. Repealer

Any ordinance, resolution, motion, policy statement or parts of any such ordinance, resolution, motion or policy statement heretofore adopted which are contrary to or conflict with any provision of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 113. Effective Date

This Ordinance shall become official and effective five (5) days after its adoption and shall remain in full legal force and effect until amended or repealed by subsequent ordinance.

Ordained and Enacted by the affirmative vote of at least a majority of the duly elected Board of Supervisors of the Township of McKean, County of Erie, Commonwealth of Pennsylvania, on this the 5th day of July, 2007.