

BOROUGH OF SOUTHMONT

ORDINANCE NO. 531

AN ORDINANCE OF THE BOROUGH OF SOUTHMONT, CAMBRIA COUNTY, PENNSYLVANIA, AMENDING ORDINANCE 472, KNOWN AS THE INFLOW AND INFILTRATION ORDINANCE.

WHEREAS, the Borough of Southmont, (the "Borough") passed Ordinance 472, known as the Inflow and Infiltration Ordinance, which set forth rules and regulations to assist with preventing Inflow and Infiltration ("I&I") of ground and surface storm water from entering into the Borough's sanitary sewer system; and

WHEREAS, when Ordinance 472 was passed, the Borough believed that it was an important first step in preventing I&I and becoming compliant with state and local laws; and

WHEREAS, Since the passing of Ordinance 472, the Borough entered a Consent Decree with the Pennsylvania Department of Environmental Protection ("DEP") requiring the Borough to reduce sanitary sewer flows within its system to a specific peak-flow rate no later than December 2021;

WHEREAS, the Borough determined that extensive work needed to be performed to comply with the Consent Decree's requirements to eliminate I&I from the system and, therefore, performed a Borough-wide sanitary sewer rehabilitation project in which it replaced all public sanitary sewer lines and replaced all sanitary sewer laterals (from the foundation of homes to the public lines); and

WHEREAS, the Borough-wide sanitary sewer project has significantly reduced I&I into the Borough's sanitary sewer system, but monitoring of the system shows that I&I is still occurring at various properties within the Borough; and

WHEREAS, the Borough has performed Wet Weather testing in which it investigated the observation stacks connected to the sewer laterals of properties within the Borough after rainfall events and concluded that certain properties continue to contribute I&I into the sanitary sewer system due to the properties' under-slab sanitary lines being in disrepair and/or unlawful connections of sump-pumps, drains, downspouts, etc. to the sanitary system; and

WHEREAS, in order to comply with the Consent Decree and prevent the Borough and its residents from fines, penalties, surcharges and the like from DEP, the Borough desires to amend its I&I Ordinance to implement additional rules and regulations to further reduce I&I into the sanitary sewer system;

NOW, THEREFORE, the Borough Council hereby ordains and enacts the following:

Section 1. Repeal and Replace. Ordinance 472 is hereby repealed and replaced with this Ordinance, which shall be known as the I&I Ordinance.

Section 2. Definitions.

- (a) **Applicant:** A person applying for a Certificate of I&I Compliance or Temporary Certificate of I&I Compliance.
- (b) **Cash Security:** Cash, certified check, or treasurer's check.
- (c) **Compliance Officer:** The Borough authorized representative(s) appointed by the council whose duty it shall be to administer this Ordinance or perform certain testing to confirm compliance with this Ordinance.
- (d) **Dye Test:** A method of testing whereby dye is introduced into the storm, surface or subsurface water connection system and downspouts of structures or improvements to real property to determine if surface storm water is entering into the sanitary sewer system.
- (e) **Ground Water:** Surface water and/or ground water, including but not limited to roof and driveway drainage, basement seepage, springs, and surface drainage.
- (f) **Improved and Sewered Real Property:** Real property on which any building, driveway or parking pad, other surface or subsurface structure or improvement has been constructed, installed or erected, where the real property or any improvement on the real property is connected to the Borough's sewer system.
- (g) **Inflow and infiltration ("I&I"):** Storm and/or Ground Water that enters the sanitary sewer system through cracked pipes, leaky manholes, or improperly connected storm drains, sewer lines, down spouts and sump pumps.
- (h) **Person:** Any natural person, association, partnership, corporation, syndicate, institution, agency, authority, or other entity recognized by law as the subject of rights and duties.
- (i) **Sanitary Sewer System:** The sanitary sewer lines and related facilities within the Borough, either public or privately maintained, which transport sewage and grey water from properties located in the Borough to a sewer system interconnector of a neighboring municipality.
- (j) **Sell or Transfer:** The sale, transfer, or assignment of any interest in real property; provided, however, that a refinancing of real property, without a conveyance, is not a sale or transfer under this Ordinance.

- (k) **Wet Weather Test:** A method of observing the sanitary sewer laterals during wet weather when the ground is saturated in order to determine if ground or surface water is infiltrating the sanitary sewer lines of a property.

Section 3. Unlawful Connections. It shall be unlawful for any person to connect any rain leader, roof drain, downspout, gutter, parking lot drain, driveway drain, interior or exterior sump pump, French drain, spring or other collector or source of ground or surface storm water to the sanitary sewer system.

Section 4. Repair of Private Sewer Facilities. Persons owning property within the Borough are required to maintain all sanitary sewer lines and sanitary sewer service connections located on their property in good repair to prevent I&I.

Section 4. Testing by Borough. The Compliance Officer, or other persons authorized by council is authorized to initiate dye testing, wet weather testing or other testing or inspection measures for purposes of discovering or locating I&I in the sanitary sewer system. The Compliance Officer is authorized to retain the services of a qualified professional to perform the necessary testing or inspections. Persons owning property within the Borough are required to grant access to the Compliance Officer or other authorized agent(s) of the Borough to permit testing or other testing or inspection. It is unlawful for any person to refuse access to property for purposes of testing or inspection.

Section 5. Notices to Property Owners to Repair. In the event the Compliance Officer or authorized agent identifies I&I on the property, regardless of the cause (illegal connections, deteriorating pipes, etc.), the Compliance Officer or agent shall give written notice of same to the property owner that the I&I issue be eliminated at the property owner's expense. Property Owners shall rectify the issue within ninety (90) days from the date of notice. The Borough may extend deadlines upon good cause shown and proof that action has been taken to remedy the issue provided in the Borough notice.

Section 6. Proof of Repair and Application for Certificate of I&I Compliance. If a Property owner has received a notice under this Ordinance that a property has an I&I issue, said property owner must perform repair work within the time-frame provided and obtain a Certificate of I&I Compliance. In order to obtain a Certificate of I&I Compliance, the property must be re-tested to confirm that the repair/remediation work performed has, in fact, resolved the I&I issue.

The process for obtaining a Certificate of I&I Compliance shall begin with a submission of an application to the Borough upon completion of the repairs and testing. When the application for a Certificate of I&I Compliance is submitted to the Borough, the property owner or its agent shall include any and all relevant information and documentation to confirm that the I&I issue at the property has been resolved and is now in compliance with this Ordinance. The Application form shall be available from the Borough. The filing fee for making application for Certificate of I&I Compliance shall be established by the Borough from time to time by resolution. The filing fee is due to the Borough upon submission of the application.

Section 7. Proof of Compliance Prior to Sale or Transfer. In the event that a Property Owner receives a notice under this Ordinance that their sanitary sewer lines are causing I&I into the sanitary sewer system, it shall be unlawful for any person to sell or transfer said property without having first repaired, replaced or otherwise remedied the I&I issue and obtaining a Certificate of I&I Compliance as outlined in this Ordinance. In order to confirm compliance with this Ordinance, the Property Owner shall obtain and deliver to the buyer or transferee, at or prior to closing or transfer, a Certificate of I&I Compliance or a Temporary Certificate of I&I Compliance for the property being sold or transferred.

If a Certificate of I&I Compliance is being issued as part of a property transfer, the application shall be submitted at least 21 days prior to the date of closing or transfer of the improved real property located. Records of inspections and results shall be retained by the Borough as proof of compliance and/or inspection.

Section 8. Issuance of Certificate of I&I Compliance.

(a) After receipt of the application, the Borough shall investigate and confirm whether the seller has resolved the I&I issues that the Borough identified in its notice to the property owner. The Borough may require the property owner to utilize any testing method it deems appropriate to confirm that the I&I issue has been remedied. If the Borough is satisfied after investigation and/or testing that the I&I issues on the property have been resolved, a Certificate of I&I Compliance shall be issued.

(b) If the Borough is not satisfied that I&I issues have been resolved at the property after investigation, a Certificate of I&I Compliance shall not be issued until the Borough is satisfied that the I&I issues has been resolved.

Section 9. Application for Temporary Certificate of I&I Compliance.

(a) If a property owner has received notice of an I&I issue and the property owner wishes to sell or transfer the Property, but the work to remedy the I&I issue would require a length of time as to create a hardship for the seller or applicant, the seller or applicant may apply to the Borough for a Temporary Certificate of I&I Compliance. In these circumstances, the seller or applicant must submit the filing fee and the following information and/or documents with the Application:

(i) A written agreement between the Property Owner (Seller) and buyer identifying which party will be responsible for completing the repairs necessary to resolve the I&I issue(s) identified by the Borough in its notice to the Property Owner. As part of this agreement the parties shall include:

(1) A deadline that the party responsible for making the repairs at the property will do so no later than one hundred eighty (180) days after the date of closing in order to complete the repair work;

(2) An escrow agreement between the Property Owner and buyer wherein monies shall be escrowed by a closing agent or attorney in the amount of One hundred and Ten percent (110%) of the estimated cost of replacing sewer lines under slabs (basement or main floor).

(3) A contract executed by the party responsible for the repairs and a qualified plumber/contractor outlining the repair work to be performed to resolve the I&I issue(s) identified by the Borough and the cost of same.

(4) An agreement that the party responsible for repair will be responsible for all cost overruns related to the repair work.

(5) Any other documentation and/or information requested by the Borough to satisfy the Borough that the I&I repair work that needs completed will, in fact, be completed and in a timely manner.

(b) Upon receiving an Application for a Temporary Certificate of I&I Compliance, the Borough shall make sure that all the necessary information or documentation has been received prior to issuing a Temporary Certificate of I&I Compliance.

(c) The Borough may reject the Application for Temporary Certificate of I&I Compliance whenever the submissions required by this Section have not been made.

(d) A Temporary Certificate of I&I Compliance shall be effective up to one hundred eighty (180) days, and the expiration date of the Temporary Certificate of I&I Compliance shall be noted on the Certificate. The expiration date of a Temporary Certificate of I&I Compliance may be extended by the unilateral determination of the Borough.

(e) The purpose of allowing a Temporary Certificate of I&I Compliance is to permit the transfer of a property without undue hardship while the seller/buyer provides assurances to the Borough that the I&I issue will be resolved satisfactorily.

(f) The Application for Temporary Certificate of I&I Compliance form shall be available upon request from the Borough Secretary. The filing fee for making application for Temporary Certificate of I&I Compliance shall be established by the Borough from time to time by resolution. The filing fee is due to the Borough upon submission of the application.

(g) Upon the completion and testing of the repair work performed pursuant to a Temporary Certificate of I&I Compliance, the party responsible for the repairs shall submit an application for a Certificate of I&I Compliance pursuant to Section 6 of this Ordinance.

Section 10. Municipal Lien and Tax Verification Letters. When the Borough receives a request for a municipal lien letter or tax verification letter associated with a property which has received an I&I notice, the Borough will notify the requestor that an Application for a Certificate of I&I Compliance or Temporary Certificate of I&I Compliance (and the applicable filing fee), shall be submitted.

Section 11. Expiration of Certificate of Compliance. A Certificate of I&I Compliance issued under this Ordinance shall be valid for a period of ten (10) years if the repair work completed was under-slab replacement and included a passing low-pressure test. Otherwise, a Certificate of I&I Compliance issued under this Ordinance shall be valid until the Borough identifies that the property has an I&I issue.

Section 12. Conflict with General Police Powers. This Ordinance shall not be a limitation, in any fashion whatsoever, of the Borough's right to use multiple causes of action to eliminate I&I, enforce its Ordinances, or the laws of the Commonwealth. Nothing in this Ordinance shall be a defense to any citation issued by any municipal corporation or the Commonwealth pursuant to any other law or ordinance.

Section 13. Penalties & Remedies. Any person who violates or refuses to comply with any of the terms or provisions of this Ordinance, shall be subject to a penalty of not more than Six Hundred Dollars (\$600.00) for each violation. Once a person is notified of a violation of this Ordinance, each day that such violation occurs, after the allowable correction period approved by the Borough, shall constitute a separate violation.

In addition to and not in lieu of the foregoing, the Borough may seek other relief to include, but is not limited to, equitable relief to compel compliance with this Ordinance.

Section 14. Severability. In the event that any section or provision of this Ordinance is declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

Section 15. Effective Date. This Ordinance shall take effect upon after adoption and ratification.

ORDAINED and ENACTED this 15th day of March, 2021, by the governing Body of the Borough of Southmont.

ATTEST:

Amanda D. Trayton
Borough Secretary (Seal)

BOROUGH OF SOUTHMONT:

By *S. Speicher*
Sheree Speicher, President

Approved this 15th day of March, 2021:

BY: *Mark Yonko*
Mark Yonko, Mayor