

ORDINANCE NO. 7 of 2019

**AN ORDINANCE ADDING PROVISIONS TO THE CURRENT CHAPTER 78 OF THE BUTLER TOWNSHIP CODE WHICH WILL PROVIDE FOR THE RESERVATION OF CAPACITY IN THE TOWNSHIP'S SEWER SYSTEM, PROVIDING FOR THE PAYMENT OF FEES TO RESERVE CAPACITY AND UPDATING THE TAPPING FEE**

**NOW THEREFORE BE IT ENACTED AND ORDAINED** by the Township Supervisors of the Butler Township, Adams County, Pennsylvania, and it is enacted and ordained as follows:

**SECTION 1:** Chapter 78 of the Butler Township Code, Adams County, is hereby amended by the addition of Article VII, Reservation of Capacity, which will read as follows:

**§78-70. Purpose.**

Butler Township, Adams County, Pennsylvania, by its duly elected or appointed and incumbent Township Supervisors, has determined that the cost of sanitary sewage system capacity for future use creates an unreasonable and inequitable economic burden upon Butler Township and the existing users of the Township's sanitary sewage system. Until such time as landowners of unimproved lands, subdivisions and land developments for which sewer capacity is available and has been reserved, choose to make use of that capacity, Butler Township and ultimately the existing users of the Township's sanitary sewage system are required to amortize the costs of the same. Moreover, such reserved capacity remains unavailable to others who may have immediate need for the same. It is, therefore, deemed to be in the public interest of the Butler Township and the existing users of the Township's sanitary sewage system, as well as potential users without reserved capacity, that landowners desiring or required to reserve sewer system capacity pay a charge designed and calculated to amortize the cost of that portion of the Township's sanitary sewage system capacity allocated to and reserved unto them by virtue of presently available facilities or by mandate of the Commonwealth of Pennsylvania.

**§78-71. Definitions.**

Unless the context specifically and clearly indicates otherwise, the meanings of the following words, terms and phrases used in this Part shall be as follows:

**APPLICANT**

The corporation, partnership or individual who makes or causes to be made a subdivision of land, land development or any other manner of improvement to real property in regard to a tract of land located within the service area of the Butler Township Sewer System and who has requested approval of an application for reservation of sewer capacity.

**DEP**

The Department of Environmental Protection of the Commonwealth of Pennsylvania, or its successor in authority.

**DEVELOPER**

Any landowner who makes, causes to be made, or proposes to make (as evidenced by submission), a subdivision of land or a land development located within the service area of the Butler Township Sewer System.

**ENGINEER**

The person or organization duly employed by the Township as consultant and authorized to review, inspect and comment on the information, documentation and work associated with a request for approval of reservation of sewer capacity by an applicant. In cases where the Township does not employ a consultant, the word "Township" is substituted for Engineer throughout this article.

**EDU (EQUIVALENT DWELLING UNIT)**

The unit of service by which a charge or charges shall be imposed upon each property, as determined by this article, which shall be deemed to constitute the equivalent amount of sanitary sewage discharge by an average single-family dwelling unit as determined by the Township's Engineer. The words "dwelling unit" shall mean any room, group of rooms, house, trailer or other structure or enclosure occupied or intended for occupancy as separate living quarters by a family or persons living together or by persons living alone.

**LAND DEVELOPMENT**

The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:

- A. A group of two or more buildings;
- B. The division or allocation of land or space between or among two or more existing or prospective occupants by means of, or for the purpose of, streets, common areas, leaseholds, condominiums, building groups or other feature; or
- C. Any other project requiring the approval of the Township pursuant to any act or ordinance.

**LAND PLANNING MODULE**

The module required by DEP, pursuant to the Pennsylvania Sewage Facilities Act (Act 537), as amended, and the regulations promulgated by DEP thereunder.

**PERSON**

Any individual or group of individuals, partnership, joint venture, public or private corporation, or any other entity of any nature.

**PROJECT**

A subdivision, land development or any other manner of improvement to real estate being made or caused to be made by an applicant or developer.

**PROPERTY OWNER**

The owner of any improved or unimproved lot or tract of land within the area to be served by the Township which is not immediately connected to the sewer system, but which could be connected to such system.

**RESERVE CAPACITY**

The volume of sewage capacity allocated to and reserved by an applicant.

**SANITARY SEWAGE SYSTEM**

All sewers, all pumping stations, all force mains, all sewage treatment works, and all other sewage facilities owned by or leased to and operated by the Township for the collection, transportation and treatment of sanitary sewage and industrial wastes, together with their appurtenances, and any additions, extensions or improvements thereto. Said term shall also include sewers within the Township which serve one or more properties discharging into the sanitary sewage system, even though such sewers may not have been constructed by the Township and are not owned or maintained by the Township.

**SUBDIVISION**

The division of a single lot, tract or parcel of land, or part thereof, into two or more buildable lots, tracts or parcels of land, including changes in street lines or lot lines for the purposes, whether immediate or future, of improvement and development.

**TOWNSHIP**

Butler Township, Adams County, Pennsylvania, and its authorized employees and agents.

**USE**

The specific purpose for which applicant's/developer's land, development, subdivision or other improvement to real property is designated, arranged, intended or for which it is or may be occupied or maintained.

**§78-72. Application for reservation of capacity.**

- A. Property owners and developers intending to engage in land development or subdivision in the Township (also referred to in this section as the applicant) and wishing to reserve sewage conveyance and treatment capacity in the sewer system for future use by the occupants of the project may do so by entering into a sewage capacity reservation agreement as approved by the Township.
  1. Property owners with approved preliminary or final subdivision or land development plans and who intend to develop the property and connect to the sewer system within a year are encouraged, but not required, to reserve sewage capacity

by means of payment of the tapping fee, rather than through a sewage capacity reservation agreement. Payment of the tapping fee creates a long-term reservation of sewage capacity for that property.

- B. The sewage capacity reservation agreement (hereafter "agreement") shall provide as follows:
1. That the Township shall reserve capacity in increments of EDUs. Fractional EDUs shall not be reserved. Capacity shall only be reserved for the conveyance and treatment of residential sewage of normal characteristics as determined by the Township Engineer.
  2. That the applicant shall pay an initial sewage capacity reservation fee as set forth in § 78-73. This initial payment shall serve to reserve capacity for that number of EDUs for a period of one year. The agreement will not be executed by the Township until the sewage capacity reservation fee is paid.
  3. That the agreement may be extended for periods of one year or less, upon written request of the applicant and at the sole discretion of the Township. For each year of extension, a sewage capacity reservation fee as set forth in § 78-20 shall be paid for each EDU of capacity to be reserved. An extension for less than one year shall be subject to a proportionate fee.
  4. Such other terms and conditions as the Township and applicant shall agree.
- C. Reservation of capacity for sewage of an unusual nature, such as commercial or industrial waste, may be made by special agreement and at the sole discretion of the Township. The determination of the number of EDUs to be reserved for such a reservation shall be determined by the Engineer. The special agreement shall include the provisions set forth in Subsections B(2) and (3) above and may contain such other terms as the Township and applicant shall agree.
- D. The sewage capacity reservation agreement shall not create an obligation of the Township to provide sewage conveyance or treatment capacity in excess of the amount reserved or beyond the current term of the agreement. The Township may refuse to enter or renew an agreement for any reason, at the sole discretion of the Township, and the applicant's capacity reservation will then expire on the expiration date of the agreement.
- E. The sewage capacity reservation fee shall be consideration for entering into the agreement, and no portion of the fee shall be refunded under any circumstance. If the owner constructs

land improvements on the tract for which capacity was reserved and connects them to the sewer system, payment of the then-current tapping fee will become due upon application for the connection permit; upon issuance of the connection permit, the provisions of § 78-20 of this chapter shall govern, and the sewage capacity reservation agreement will automatically terminate with no rebate of the reservation fee for any unexpired term.

- F. A reservation of capacity made under this section shall be specific to a described tract of land, consisting of one or more contiguous lots, and specific to the owner or developer executing the sewage capacity reservation agreement. The reservation is nontransferable to a different tract of land or to a new owner or developer, except that the reserved capacity of one EDU may be transferred to a new owner of an individual lot for which capacity was reserved by the prior owner or developer (as described in the agreement), and provided that the lot in question is to be improved and connection to the sewer system made within the term of the current agreement, as evidenced by an approved preliminary or final subdivision or land development plan or an issued or pending building permit. A new owner of property for which a reservation has been made, but without a present intent to connect to the sewer system, may enter into a new sewage capacity reservation agreement by applying to the Township and paying the capacity reservation fee as applicable at the time of execution; the Township may accept or decline a request for a new agreement, as provided in Subsection D above. The Township will not repurchase any reserved capacity that an applicant finds he does not require at the time of application for the connection permit.
- G. Execution of a sewage capacity reservation agreement by the Township shall not create any property rights or any other legal or equitable rights in the owner or developer or running with the land with respect to land development, plan approval, building permits or any other approval or permit issued by the Township or any other entity.
- H. The procedures set forth in this § 78-72 and the tapping fee provisions of § 78-20 shall be the sole methods of reserving sewage conveyance and treatment capacity for projects in the service area of the Township sewer.
- I. Should the sewer system be acquired by another entity, municipal or private, the agreement shall become void, without rebate or return of any fees paid.
- J. If the capacity reservation procedures as set forth in this article are rendered unlawful by an act of the General Assembly, or so found by a court of competent jurisdiction, the agreements entered into pursuant to this article shall thereupon become void and sewer capacity may be reserved by payment of the tapping fee.

**§78-73. Sewage capacity reservation fee.**

- A. The sewage capacity reservation fee to be charged for entering a sewage capacity reservation agreement shall be calculated as 60% of the current annual average sewage usage charge for residential customers in the Township. The sewage capacity reservation fee shall be recalculated by the Engineer at the beginning of each calendar year for application to sewage capacity reservation agreements entered into during that year.
- B. The sewage capacity reservation fee shall be charged for each EDU of capacity to be reserved under a sewage capacity reservation agreement. The sewage capacity reservation fee is to be paid in full at the time that the sewage capacity reservation agreement is signed. The fee may not be secured by bonds, notes or other security in lieu of payment.
- C. When a sewage capacity reservation agreement is entered into for a partial year, the sewage capacity reservation fee for that period of time shall be proportionate to the period of time reserved. The initial term of an agreement shall be one year; partial years may be reserved in subsequent extensions, if approved by the Township.
- D. For special (nonresidential) sewage capacity reservation agreements: If the reserved capacity includes a fractional EDU, the sewage capacity reservation fee shall be prorated accordingly.

**SECTION 2:** Chapter 78, §78-20 of the Butler Township Code, Adams County, is hereby amended by deleting the current language regarding tapping fees and replacing it with the following:

The amount of the tapping fee for connection of each improved property to the sewer system shall be set by resolution of the Township Supervisors, and shall be amended as necessary from time to time.

**SECTION 3:** Repealer.

All provisions of previous ordinances of the Butler Township, which are contrary to this ordinance, are expressly repealed.

**SECTION 4:** Savings Clause.

In all other respects, the ordinances of the Butler Township shall remain as previously enacted and ordained.

**SECTION 5:** Severability.

The provisions of this Ordinance are severable and if any of its sections, clauses or sentences shall be held illegal, invalid or unconstitutional, such provision shall not affect or impair any remaining sections, clauses or sentences of the same.

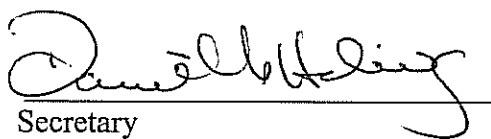
**SECTION 6:** Effective Date.

This ordinance shall become effective upon adoption.

Duly Enacted and Ordained this day of July 8<sup>th</sup> 2019  
by the Board of Supervisors of the Township of Butler, Adams County, Pennsylvania, in  
lawful sessions duly assembled.

ATTEST:

BY:

  
Secretary

  
Chairman of the Board of Supervisors