

Chapter 168: SEWERS

[HISTORY: Adopted by the Borough Council of the Borough of Malvern as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Sewer ordinances — See Ch. A233.

ARTICLE I Sewer Connections [Adopted 8-28-1975 by Ord. No. 245 (Part 11, Ch. 2, Art. A, Secs. 11-2001 through 11-2006, of the 1975 Code of Ordinances)]

§ 168-1. Definitions. [Amended 1-2-1991 by Ord. No. 91-1]

Unless the context specifically indicates otherwise, the meaning of the terms used in this article shall be as follows:

AUTHORITY — The Malvern Municipal Authority.

AUTHORITY ENGINEER — An engineer employed by the Authority or an authorized member of his staff.

BOROUGH — The Borough of Malvern, Chester County, Pennsylvania.

BOROUGH ENGINEER — An engineer employed by the Borough or an authorized member of his staff.

COMMERCIAL SEWER USER OR SEWERED PREMISES OR PROPERTY — One engaged in, intended for or used as a store, office or other establishment or facility for the purpose of carrying on a trade, business or profession; and all sewer users which are not in any other use category.

INDUSTRIAL SEWER USER OR SEWERED PREMISES OR PROPERTY — One engaged in, intended for or used as a manufacturing, fabricating, processing or cleaning operation or facility and/or one engaged in the assembly of any product, commodity or article.

INSTITUTIONAL SEWER USER OR SEWERED PREMISES OR PROPERTY — One engaged in, intended for or used as a charitable or public service principal use.

LATERAL SEWER or SERVICE CONNECTION — That part of the sewer system extending from a sewer to the curblin or, if there shall be no curblin, to the edge of the street abutting the property affected or, if no such lateral shall be provided, then "lateral sewer" or "service connection" shall mean that portion of or place in a sanitary sewer which is provided for the connection of any service line.

NATURAL OUTLET — Any outlet into a watercourse, ditch, pond, lake or other body of surface or ground water.

OCCUPIED BUILDING — Each single-dwelling unit, household unit, flat or apartment unit, store, shop, office, business, commercial or industrial unit or family unit contained within any structure, erected and intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage and industrial wastes, or either thereof, is or may be discharged, located in the Borough.

OWNER — Any person vested with ownership, legal or equitable, sole or partial, of any property situated in the Borough.

PERSON — Any individual, partnership, company, association, society, corporation or group.

RESIDENTIAL SEWER USER OR SEWERED PREMISES OR PROPERTY — One engaged in, intended for or used as a dwelling unit or units and accessory uses to such a dwelling as defined by the Borough's zoning regulations. *Editor's Note: See Ch. 220, Zoning.*

SANITARY SEWER — A sewer which is part of the sewer system and which carries sanitary sewage and/or treated industrial waste permitted to be discharged into the sewer system.

SERVICE LINE or HOUSE CONNECTION — That part of the main house drain or sewer line extending from a point five feet outside the outer building wall or foundation wall to its connection with the lateral sewer.

SEWERED PREMISES — A building or any part thereof which is connected, directly or indirectly, to the sewer system and occupied or intended to be used or occupied by a sewer user for or as a principal use (as defined for zoning purposes).

SEWER SYSTEM — Sewer mains, lateral sewers from a sewer main to service line or house connection, sewage ejector and/or pumping stations, sewer force mains and all appurtenant facilities operated by the Borough in furnishing sewage service.

SEWER USER — The owner and/or occupant of any sewer premises.

§ 168-2. Use of public sewers required.

- A. It shall be unlawful for any owner of property who is required to connect to the sewer system pursuant to Subsection B below, to construct or maintain any privy, privy vault, cesspool, sinkhole, septic tank or similar receptacle intended or used for the disposal of sewage within the Borough or, unless such discharge is pursuant to a permit issued by the Pennsylvania Department of Environmental Resources, to discharge or permit the discharge of any sanitary sewage or industrial waste into any natural outlet in the Borough.
- B. Each owner of an occupied building situated on property abutting on any street, alley or right-of-way in which there has been constructed a sanitary sewer and where any part of such building is within 150 feet of the sewer and is accessible thereto, shall at his own expense install suitable sanitary facilities therein and connect such facilities directly within 60 days after the date of official notice to do so, given in the manner provided by law. In the event any such owner shall refuse or neglect to so connect within said sixty-day period, he shall be deemed to be in violation of this article, and the proper officers of the Borough, or their agents, may enter upon such property and construct such connection. In such case, the Borough officers shall forthwith, upon completion of the work, send an itemized bill of the cost of the construction of such connection to such owner, which bill shall be payable forthwith. In case of neglect or refusal by such owner to pay said bill, within 30 days thereafter, it shall be the duty of the Borough officers to file municipal liens. Notwithstanding the foregoing provisions, no owner of an occupied building shall be required to connect such building to a sanitary sewer if the Council determine that connecting such building would result in an overloading of sewage treatment facilities.
- C. No privy, privy vault, cesspool, sinkhole, septic tank or similar receptacle shall be connected with the sewer system at any time. Each privy, privy vault, cesspool, sinkhole, septic tank or similar receptacle shall be abandoned upon the making of connection to the sewer system and, at the request of the Borough officers, shall be cleaned and filled under direction and supervision; and any such privy, privy vault, cesspool, sinkhole, septic tank or similar receptacle not so abandoned and, if required by the Borough officers, cleaned and filled, shall constitute a nuisance, and such nuisance shall be abated as provided by law at the expense of the owner of such property.
- D. There is hereby reserved to the Borough the right to refuse to any person the privilege of connecting any occupied building to the sewer system, or to compel discontinuance of the use of any sewer by any person, or to compel the pretreatment of industrial wastes, in order to prevent discharge into the sewer system of wastes which may be deemed by the Authority, the Authority engineer, the Borough or the Borough Engineer, to be harmful to the sewer system or to have a deleterious effect on sewage treatment processes or to be injurious to personnel operating the sewer system.

§ 168-3. Permits to make connections.

- A. No person shall uncover, connect with, make any opening into or use, alter or disturb in any manner any sewer or the sewer system without first making application for and obtaining a permit, in writing, from the Borough.
- B. Application to the Borough for a permit required under this section shall be made by the owner of the property to be served, in such form as may be prescribed by the Borough. The application shall be accompanied by the required connection charge and tapping fee imposed by the Authority (which has designated the Borough its agent for collection).
- C. No person other than the Borough, or its agents, shall make or cause to be made the connection of any property with a lateral sewer until such person shall have fulfilled each of the following conditions:
 - (1) Such person shall have notified the Borough of the desire and intention to connect to a lateral sewer;
 - (2) Such person shall apply for and obtain a permit as required by this article;
 - (3) Such person shall have given the Borough at least 24 hours' notice of the time when such service line is to be connected and such connection made so that the Borough may inspect the service line and the work of connection and perform necessary testing.
- D. Payment of the abovementioned connection charge shall entitle the applicant to have one lateral sewer installed to the curblin of his property, but in no case longer than 24 feet, at the expense of the Borough, including repaving. All costs of constructing such lateral sewer to a service line shall be borne by the owner of the property to be connected; and such owner shall indemnify and save harmless the Borough and the Authority from all loss or damage that may be occasioned, directly or indirectly, as a result of the construction which the owner is required to perform.
- E. Whenever the surface of any public street, sidewalk or cartway is disturbed by the construction of a service line, it shall be the responsibility of the applicant for a connection to obtain street opening permits from the Borough or highway occupancy permits from the Pennsylvania Department of Transportation. Unless otherwise required, all surfacing materials must be restored in kind, thickness and construction to the satisfaction of the Borough or of the Department of Transportation, as the case may be.

§ 168-4. Powers and authority of inspectors.

The Borough Engineer and other duly authorized representatives or employees of the Borough, bearing proper credentials and identification, shall be permitted, at all reasonable times, to enter upon any premises connected or about to be connected or required to be connected to the sewer system for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article.

§ 168-5. Protection of sewer system from damage.

No person shall maliciously, willfully or negligently damage, destroy, deface, block or otherwise tamper with any sewer or any other structure or equipment which is part of the sewer system, or discharge any substance into the sewer system contrary to or in violation of Ordinance No. 246 (Article III of this chapter) of the Borough which, inter alia, prohibits discharge of certain wastes into the sewer system and provides for rules and regulations.

§ 168-6. Violations and penalties; disconnection.

- A. Any person who shall violate any provision of this article other than § 168-4 or 168-5 shall be served by the Borough with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. (The notice provided in § 168-2B above shall be deemed to be notice of a violation for this purpose in respect of violations of such section.) The offender shall

within the period of time stated in such notice (if any, otherwise forthwith) permanently cease all violations.

- B. Any person who shall continue any violation beyond the time limit fixed as provided for in § 168-6A shall be subject to a fine in an amount not exceeding \$100 for each violation. A new and separate violation shall be deemed to have been committed for each day any violation continues beyond such time limit.
- C. Any person who shall violate any provision of § 168-4 or 168-5 shall, upon summary conviction, be subject to a fine not to exceed \$100 for each violation, together with costs of prosecution in each case.
- D. All fines and penalties imposed for violation of any provision of this article shall be paid to the Treasurer of the Borough for the use of the Borough. Default in payment of the fine and costs shall make the defendant liable to imprisonment for a term not to exceed 30 days.
- E. Any person violating any of the provisions of this article, in addition to becoming liable for a fine and penalty, shall become liable to the Borough for any expense, loss or damage occasioned by the Borough by reason of such violation.

ARTICLE II Sewer Rental Fees [Adopted 1-2-1991 by Ord. No. 91-1 (Part 11, Ch. 2, Art. A, Secs. 11-2007 through 11-2010, of the 1975 Code of Ordinances); amended in its entirety 1-3-2006 by Ord. No. 2006-1]

§ 168-7. Imposition of sewer rental fees.

- A. Sewer rental fees are hereby imposed upon each sewer premises or property located within the Borough for the use of said sewer, sewerage system, and/or sewage treatment works. Sewer rental fees shall be assessed annually, and collected quarterly, and shall include, but are not limited to, the following charges:
 - (1) Minimum annual sewer rental/usage fee. The minimum annual sewer rental fee for sewer premises or property located within the Borough for the use of said sewer, sewerage system, and/or sewage treatment works shall be \$302.40 annually, which sum will be payable, collected, and assessed quarterly in the amount of \$75.60 per annual quarter. The allowable usage per annual quarter per sewer premises or property shall not be in excess of 5,000 gallons of water in order to qualify for the minimum annual sewer rental/usage fee.
 - (2) Usage charges/fees. Any premises and/or property which shall use in excess of 5,000 gallons of water per annual quarter shall be assessed an excess usage charge/fee of \$4 per and for each additional 1,000 gallons of water used, in addition to the minimum annual sewer rental/usage fee. Any excess usage charges/fees will be assessed upon, payable, and collected each annual quarter, in addition to the minimum quarterly annual sum of \$75.60, for any usage which exceeds 5,000 gallons of water per quarter as measured by all meters measuring water used at the sewer premises or property.
- B. Sewer rental fees and charges will be billed quarterly for all users and/or sewer premises or property and, when water service is metered, shall be based on metered water use as measured by all meters measuring water used at the sewer premises or property. The "first annual quarter" is January through March of any given year. The "second annual quarter" is April through June of any given year. The "third annual quarter" is July through September of any given year. The "fourth annual quarter" is October through December of any given year.
 - (1) For commercial, industrial, institutional, and/or any nonresidential use and/or users, sewer usage and quarterly usage charges/fees, if any, are and will be based on the water meter readings for the same corresponding annual quarter.
 - (2) For residential use and/or users with metered water service, sewer usage and quarterly usage

charges/fees, if any, are and will be based on the gallons of water used, according to the Water Utility (as that term is defined infra), during the winter water usage period. The "winter water usage period" is the period billed by the Water Utility for, and includes but is not limited to, October through March of any given year (i.e., the fourth annual quarter of any given year and first annual quarter of any given year which immediately follows). Quarterly usage charges/fees for any given year, beginning with the first annual quarter which is part of said winter water period (as defined above), shall be based on one-half of the number of gallons of water used by any sewerer premises or property during the winter water period.

- C. The legal and/or record owner(s) of any sewerer premises or property shall be responsible and liable for any and all sewer rental fees and charges, usage charges/fees, and/or any other related or applicable charges, fees, interest, penalties, costs, and/or attorneys' fees due, assessed, and/or charged upon or against any sewerer premises or property for each and every sewer user and/or sewerer premises located thereupon. If there is only one water meter for more than one sewer user and/or sewerer premises at a particular property and/or address, the Borough may, but is not required to, at the property owner(s)' request, bill the sewer user(s) directly instead of the property owner(s). Such billing of a nonowner(s) sewer user(s) shall not extend any time for payment or relieve the property owner(s) of any duty, responsibility, obligation, and/or liability for and to pay any and all sewer rental fees and charges, usage charges/fees, and/or any other related or applicable charges, fees, interest, penalties, costs, and/or attorneys' fees due, assessed, and/or charged upon or against any sewerer premises or property, when and as due. Where there is more than one sewer user(s) at or occupying a sewerer premises or property, or when there is more than one sewerer premises at or on a property, the legal and/or record owner(s) of said sewerer premises or property shall pay both the minimum annual sewer rental/usage fee and any and all usage charge(s)/fee(s) for each and every sewer user(s) and/or sewerer premises at or on his, her, their, and/or its property. In the event that water consumption of a sewerer premises or property which has or contains more than one sewer user(s) or more than one sewerer premises at or on said property, is not metered separately or individually, the usage charges/fees for any given or applicable annual quarter for any and all sewer user(s) and/or sewerer premises on and/or at the property shall be based upon the number of gallons of water which exceed 5,000 gallons of water per annual quarter of any given year multiplied by the number of sewer users and/or sewerer premises at the property.
- D. If the applicable use classification of any property, sewer user(s), and/or sewerer premises or property changes during any given annual quarter, any difference, increase, and/or change in the minimum annual sewer rental/usage fee and/or usage charges/fees which may or does result from such change shall be prorated on a monthly basis.
- E. All legal and/or record owners of any sewerer premises or property shall give the Borough written notice of their correct mailing address and any change(s) thereto or therein. Any failure to receive any billings for sewer rental fees and/or usage charges/fees will not excuse any nonpayment and/or late payment of any sewer rental fees and/or usage charges/fees nor will the same permit or result in any extension of any billing and/or due date of any such sewer rental fee(s) and/or usage charge(s)/fee(s).

§ 168-8. Time and method for paying sewer rental fees.

Minimum annual sewer rental/usage fee(s) and/or usage charges/fees shall be billed quarterly. Bills for the same shall be dated on or before the 15 days following the end of the corresponding annual quarter (i.e., by April 15 for the first annual quarter, by July 15 for the second annual quarter, by October 15 for the third annual quarter, and by January 15 for the fourth annual quarter). Each bill shall include any and all minimum annual sewer rental/usage fee(s) and/or usage charges/fees for the annual quarter immediately preceding the month of the bill's date. The Borough shall mail quarterly sewer bills on or about the date imprinted thereon. Any and all bills shall be due and payable on their respective dates.

§ 168-9. Penalties and liens for delinquent sewer rental fees.

- A. Any and all minimum annual sewer rental/usage fee(s) and/or usage charges/fees shall be subject to and assessed a penalty of 10% thereof if not paid within 30 days of the date the same is due. Interest, at the rate of 1/2% per month, or 6% per year, or a fraction thereof, shall be added, assessed, and collected upon any minimum annual sewer rental/usage fee(s) and/or usage charges/fees and/or penalty(ies), and/or any portion(s) thereof which are due and owing and unpaid for more than 60 days from its and/or their due date.
- B. Any and all minimum annual sewer rental/usage fee(s) and/or usage charges/fees, together with any and all penalties and/or interest thereon, if not paid when due, shall be deemed to be delinquent. Any and all minimum annual sewer rental/usage fee(s) and/or usage charges/fees, together with any and all penalties and/or interest thereon, and/or together with any charges, expenses, and fees incurred in the collection of any delinquent account, including reasonable attorneys' fees under 53 P.S. § 7106(a.1) added thereto for failure to promptly pay, if applicable, shall be a lien against the sewered premises or property, may be recorded in the Office of the Prothonotary for Chester County, Pennsylvania, and/or may be collected in the manner provided by law for the filing and collection of such liens.

§ 168-10. Borough's right to shut off water supply for nonpayment of sewer rental fees.

If the legal and/or record owner(s) of any sewered premises or property and/or if any sewer user(s) shall neglect or fail to pay any rental, rate or charge for sewer, sewerage, or sewerage treatment service imposed by the Borough, for a period of 30 days from the due date thereof, the Borough Manager, at the request and direction of Borough Council, shall take such action as is necessary to have the water supply to such sewered premises or property shut off until all such overdue rentals, rates, and charges, together with any penalties and interest thereon, shall be paid. In no case shall the water supply be shut off to any sewered premises or property until 10 days after written notice of an intention to do so has been mailed to the person(s) liable for payment of the rentals and charges, and in addition thereto, there has been posted a written notice at the main entrance to the sewered premises or property. If during such ten-day period, the person(s) liable for the payment of the rentals and charges delivers to the Water Utility supplying water to the sewered premises or property a written statement, under oath or affirmation, stating that he, she, they, and/or it has a just defense to the claim, or part of it, for such rentals or charges, then the water supply shall not be shut off until the claim has been judicially determined. The statement also shall contain a declaration under oath or affirmation that it is and/or was not executed for the purpose of delay. Nothing in this section shall authorize the Water Utility to shut off or deny water service to any lessee of a sewered premises or property because a previous lessee failed to pay either the water or sewer service rate, rental, or charge. If more than one sewer user(s) and/or sewered premises is located at a property which is under common ownership and there is only one water service and/or supply, the Borough may shut off or deny the water service if, and for, any delinquent sewer rentals and/or other fees and/or charges due and owing on the property. The Borough shall pay to the Water Utility the reasonable additional clerical and other expenses incurred by the Water Utility in providing such services. The Borough in requesting and directing the shut off of water shall pay to the Water Utility the cost of such shut off and the estimated loss of water revenues resulting from such shut off. In the event the Borough shall incur any costs and/or expenses, including, but not limited to, any fees, charges, and/or other sums and/or payments to the Water Utility and/or any of its successors and/or assigns which provide water service within the Borough, because of, in connection with, and/or related to the shut off of any water service to any sewered premises or property, all such costs and/or expenses shall be borne by and paid by the owner(s) of the sewered premises or property and/or the sewer user(s) to whom the sewer, sewerage, or sewage treatment service is provided and/or supplied. All such costs and/or expenses shall be added to the total amount due prior to the reinstatement of any water and/or sewer service and any such costs and/or expenses owed to the Borough shall also be added to the amount of any lien(s) against the sewered premises or property to which the delinquent sewer service was provided and/or supplied. The term "Water Utility" shall mean Aqua Pennsylvania, its successor(s) and/or assign(s), and/or any other duly authorized and regulated public utility company engaged in the supplying of water or water service to properties in the Borough of Malvern.

ARTICLE III Industrial Waste, Holding Tank Waste and Septage [Adopted 9-20-1994 by Ord. No. 94-4 (Part 11, Ch. 2, Art. B, of the 1975 Code of Ordinances)]

§ 168-11. Purpose; policy.

- A. This article requires all users and use of the Borough's sewer facilities to comply with the regulations (collectively "applicable regulations" or any one individually "applicable regulation") promulgated by the Valley Forge Sewer Authority (VFSA), the United States Environmental Protection Agency (USEPA), which include, without limitation, the pretreatment standards promulgated by the USEPA as set forth in 40 Code of Federal Regulations (CFR) 403 et seq. and the Pennsylvania Department of Environmental Resources (PADER); and
- B. This article establishes the means of enforcing those regulations.

§ 168-12. Amended VFSA regulations adopted. [Amended 6-18-2002 by Ord. No. 2002-2 *Editor's Note: Section 2 of this ordinance provided for the deletion of existing Appendix XXII of the 1975 Code of Ordinances and replacement with a copy of the "Valley Forge Sewer Authority Rules and Regulations Governing the Acceptance of Industrial Waste, Trucked Industrial Waste, Hauling Tank Waste and Septage dated May 31, 2002." Said document has not been codified; it is on file in the office of the Borough Secretary.]*

The standards established by the Valley Forge Sewer Authority Rules and Regulations Governing the Acceptance of Industrial Waste, Trucked Industrial Waste, Hauling Tank Waste and Septage, dated May 31, 2002, are hereby adopted as the minimal standards of the Borough, applicable to all users and use of the Borough's sewer facilities, and any user or use of the Borough facilities must comply with all of the VFSA's requirements with respect to these regulations, as well as all applicable regulations.

§ 168-13. Violations.

Without limiting any other section hereof, a person (as defined by the VFSA regulations) violates this article:

- A. By discharging sewage or waste into the Borough's sewage facilities when such discharge is not in compliance with this article, any applicable industrial permit requirements or National Categorical Pretreatment Standards, any applicable regulation or any Borough order; or
- B. By otherwise failing or refusing to comply in any way with the VFSA regulations, including but not limited to achieving all permits, licenses and approvals and filing all reports, when and as required.

§ 168-14. Solicitor authorized to commence action; cost of action.

The Borough Solicitor is authorized to commence actions against any violator of this article for appropriate legal and/or equitable relief from the violation. If the Borough is granted any relief in any such action, the violator shall, in addition to any fine or penalty, pay all the Borough's costs thereof, including but not limited to attorney fees.

§ 168-15. Penalties.

- A. Any person (as defined by VFSA regulations) who violates any provision of this article shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000 and/or to imprisonment for a term not to exceed 90 days. Every day that any violation of this article continues shall constitute a separate offense.
- B. Any person (as defined by VFSA regulations) who knowingly makes any false statement,

representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article or any industrial waste permit or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this article shall be in violation of this article and may be prosecuted in accordance with the provisions of the Pennsylvania Crimes and Offenses Code, 18 Pa.C.S.A. § 4901 et seq. pertaining to perjury and falsification in official matters.

§ 168-16. Severability.

If any provision, paragraph, word or section of this article is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words and sections of this article shall not be affected and shall continue in full force and effect.

§ 168-17. Repealer.

All other ordinances or parts of other ordinances and provisions of this Code inconsistent or conflicting in any part with this article are hereby repealed to the extent of such inconsistency or conflict.

§ 168-18. Adoption of future amendments of VFSA regulations. [Added 6-18-2002 by Ord. No. 2002-2]

In the event that the Valley Forge Sewer Authority further amends its rules and regulations, or otherwise undertakes regulatory action governing wastewater treatment within the Borough of Malvern, said proposed regulations must be forwarded to and adopted by Borough Council prior to becoming effective.

ARTICLE IV Charges and Fees [Adopted 1-16-2001 by Ord. No. 2001-3]

§ 168-19. Definitions.

Unless the context specifically and clearly indicates otherwise, the meaning of terms and phrases used in this article shall be as follows:

BILLING UNIT — Any single dwelling unit, household unit, flat or apartment unit, condominium or cooperative unit, store, shop, office, business, commercial or industrial unit, or family unit contained within any structure, erected, intended for and/or used for continuous or periodic habitation, occupancy or employment by human beings and from which sanitary sewage and industrial wastes, or either, is or may be discharged.

BOROUGH — The Borough of Malvern, Chester County, Pennsylvania.

DWELLING UNIT — Any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by a family or other group of persons living together or by persons living alone.

IMPROVED PROPERTY — Any property upon which there is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage and/or industrial wastes shall be or may be discharged.

INDUSTRIAL WASTES — Any solid, liquid or gaseous substance or waterborne wastes or form of energy rejected or escaping in the course of any industrial, manufacturing, trade or business process or in the course of the development, recovery or processing of natural resources, as distinct from sanitary sewage.

OWNER — Any person vested with ownership, legal or equitable, sole or partial, of improved property.

PERSON — Any individual, partnership, company, association, corporation, trust, governmental body, political subdivision, municipality authority or other group or entity.

SANITARY SEWAGE — Normal water-carried household and toilet wastes from any improved property.

§ 168-20. Tapping fees.

- A. No person shall connect any improved property directly or indirectly to any part of the sewer system without first making application for and securing a permit, in writing, from the Borough as described in § 168-3 of the Borough Code. Such application shall be made in such form as may be prescribed by the Borough.
- B. A tapping fee as set forth in the next subsection of this section is imposed upon and shall be collected by the Borough from any person who or which is granted capacity in the sewer system and from the owner of each improved property who or which shall physically connect, be connected or required to connect to the sewer system, for the right to use the sewer system, whether such use shall be direct or indirect.
- C. The amount of tapping fee shall be \$2,858.45 for each equivalent dwelling unit (EDU). For purposes of this article, an EDU is a unit of use representing the estimated amount of sewage flow usage by a single-family dwelling unit over any given period. An EDU shall be deemed to represent 275 gallons per day. Any EDU shall mean and include each single dwelling unit, household unit, flat or apartment unit, condominium or cooperative unit, store, shop, office, business, commercial or industrial unit, or family unit contained within any structure, erected, intended for and/or used for continuous or periodic habitation, occupancy or employment by human beings and from which sanitary sewage and industrial wastes, or either, is or may be discharged. Notwithstanding the above, stores, shops, offices, business and commercial or industrial units which discharge more than 275 gallons per day of sanitary sewage and/or industrial wastes shall be considered to be multiple EDU's. The number of EDU's shall be the product of the actual or projected daily flow of sanitary sewage and/or industrial wastes from said facility divided by 275 gallons per day. Such actual or projected flow shall be deemed to be that stated in the then current schedule adopted by resolution of Borough Council, the same as may be amended from time to time. In the event that a particular use is not provided for in the schedule, the projected flow shall be determined by the Borough Engineer using objective standards or actual flows of like uses in similar locations. When more than one billing unit connects to the sewer system through one sewer connection, the full tapping fee shall be paid for each such billing unit, as though each billing unit had a direct and separate connection to the sewer system.
- D. Where any building connected to the sewer system shall be converted, enlarged or remodeled or additional buildings shall be constructed on a property and connected indirectly to the sewer system through an existing lateral, so as to create or establish additional uses as classified above, an additional tapping fee in accordance with this section for each such additional use shall be payable to the Borough by the owner of the property so improved.
- E. The tapping fees imposed hereunder shall be in addition to:
 - (1) Any connection fee or inspection charge imposed by the Borough; and
 - (2) Any rental or other charges fixed, charged or imposed by the Borough by reason of the use, or availability for use, of the sewer system by such property.
- F. The tapping fee shall be adjusted annually, as of January 1 of each year and beginning January 1, 2002, by the same percentage as the percentage change in the Engineering News Record Construction Cost Index (Twenty cities average) between the month of January of the previous year and the month of January in the current year. The Engineering News Record Construction Cost Index for December 2000 is 6265.
- G. The Borough shall prepare proper tapping fee bills designating the property involved, the amount of the tapping fee and naming the registered or reputed owner or owners of such property. Such bills

shall be served upon the owner or owners of such properties connected or desiring to connect to the sewer system by any of the following methods: (1) by certified or regular mail to the owner or owners or their agent or attorney at his or their last known address; (2) upon the owner or owners personally or by leaving it with an adult member of the family with whom said owner or owners reside, provided that if the owner or owners of any such property shall have no residence in the Borough or cannot be served therein, then the bill shall be served by posting upon the premises or leaving a copy with the occupant thereof if there be such an occupant, or by mailing such bill by certified or regular mail, to the owner or owners or their agent at his, her or their last known address; or (3) such other method as may be authorized and approved by the Authority.

- H. All bills shall be payable to the Borough at the Borough building, First and Warren Avenues, Malvern, Pennsylvania. All bills shall be paid in full prior to connection of an occupiable building to the sewage system or within 60 days after official notice by the Borough to so connect, whichever occurs first

§ 168-21. Collection of tapping fees and other charges.

- A. If payment of bills is not made within 60 days, interest will be charged from said 60 days at the rate of 10% per annum or such higher percentage as may be permitted by law at such time, and a penalty of 5% of the unpaid balance will be added plus any costs (including reasonable attorneys' fees) of collection in the event collection becomes necessary.
- B. Should any owner or owners of an equivalent dwelling unit against whom a tapping fee has been charged under the terms of this article fail to pay such tapping fee on or before the due date, the Borough shall have the right to institute legal action to collect same, together with interest thereon, plus a penalty and costs, as set forth in Subsection A hereof. It shall be the duty of the Borough Solicitor, when any such bills shall be unpaid, upon request by the Borough to promptly institute collection proceedings therefore as provided by law against the property owners or properties in respect to which such tapping fees have been made, to recover the tapping fee, interest and penalty, together with all court and other costs incident to collecting the same, and a reasonable attorneys' fee.
- C. In addition to, and not in lieu of, any other available remedies for collection as stated herein, tapping fees and other charges imposed by this article shall be a lien on the improved property connected to, or required to be connected to, the sewer system and any tapping fee or other charges which are not paid within 60 days after the quarterly billing date applicable to the improved property shall be filed as a lien against such improved property, which lien shall be filed and collected, together with interest and costs of collection, in the manner provided by law and Borough ordinances for the filing and collecting of municipal liens. The liens imposed under this section are in addition to, and not in lieu of, any other provisions of law or local ordinances that establish liens for sewer rents and/or other charges.

§ 168-22. Suspension of service.

- A. The Borough may suspend wastewater treatment service when such suspension is necessary, in the opinion of the Borough, in order to stop an actual or threatened discharge which presents an imminent or substantial endangerment to the health or welfare of persons or the environment, causes interference to the sewer system or causes the Borough to violate any condition of its NPDES permit.
- B. Any person notified of a suspension of wastewater treatment service shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the Borough shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the sewer system or endangerment to any individuals. The Borough shall reinstate the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful discharge and the measures taken to prevent any future occurrence shall be submitted to the Borough within 15 days following the date of occurrence.

§ 168-23. Revocation of permit.

- A. Any user who violates the following conditions is subject to having his permit revoked in accordance with the procedures of this section of the article.
 - (1) Failure of a user to factually report the wastewater constituents and characteristics of his discharge;
 - (2) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics;
 - (3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
 - (4) Violation of conditions of the permit.
- B. If a permit is revoked, the Borough may take any steps it deems advisable, including severance of the sewer connection, to promote compliance with this article.

§ 168-24. Legal action.

If any person discharges sanitary sewage, industrial wastes or other wastes into the sewer system contrary to the provisions of this article, or any order of the Borough, the Borough Solicitor may commence an action for appropriate legal and/or equitable relief in the Court of Common Pleas of Chester County.

§ 168-25. Settlements.

Nothing in this article shall be construed to limit or deny the right of the Borough or any other person to such equitable or other remedies as may otherwise be available with or without process of law, including payment of damages to the Borough by any person causing damage or injury to the sewer system. Any person who causes harm or damage to the sewer system as a result of a violation of this article shall be liable to the Borough for the full costs of such harm or damage.

§ 168-26. Authority of officers.

The proper officers of the Borough are hereby authorized and directed to execute and deliver such notices and other documents and to do all things which may be required by or desirable in light of any act of assembly or this article for the purpose of carrying out the intent hereof.

§ 168-27. Disputes.

Any dispute or alleged inequity relating to the tapping fee instituted by this article shall be submitted to the Borough, whose decision on the matter shall be final.