

## **CHAPTER 40**

### **ADMINISTRATIVE APPEALS; BOARD OF APPEALS**

**Section 40.1 Informal Hearing.** In order that the provisions of this Ordinance may be reasonably applied and substantial justice done in instances where this Ordinance is misapplied or unnecessary financial hardship would result from carrying out the strict letter of this Ordinance, an informal hearing before the Supervisor may be requested in writing by any Person deeming itself aggrieved by a citation, order, charge, fee, penalty or action within thirty (30) days after the date thereof, stating the reasons therefore with supporting documents and data. The informal hearing shall be scheduled at the earliest practicable date, but not later than fifteen (15) days after receipt of the request, unless extended by mutual written agreement. The hearing shall be conducted on an informal basis at the Township Hall or at such place as designated by the Supervisor. The Supervisor may grant the appeal, reject the appeal or schedule a second informal hearing not more than 10 days after the initial hearing to allow time for study or to gather additional information. The Supervisor shall issue a written statement of his decision within fifteen (15) business days after the informal hearing.

**Section 40.2 Board of Appeals.** In order that the provisions of this Ordinance may be reasonably applied and substantial justice done in instances where this Ordinance is misapplied or unnecessary hardship would result from carrying out the strict letter of this Ordinance, the Township Board shall serve as a Wastewater Board of Appeals. The duty of such Board shall be to consider appeals from the decision of the Supervisor and to determine, in particular cases, whether this Ordinance has been misapplied or any deviation from strict enforcement will violate the intent of the Ordinance or jeopardize the public health or safety. In all appeals, the appellant shall have the burden of proof.

**Section 40.3 Appeals from Informal Hearing.** Appeals from the written decisions of the Supervisor may be made to the Township Board, acting as a Board of Appeals, within thirty (30) days from the date of the written decision of the Supervisor. Such appeal may be taken by any Person aggrieved. The appellant shall file a Notice of Appeal with the Supervisor and with the Board, specifying the ground therefor. Prior to a hearing, the Supervisor shall transmit to the Board a summary report of all previous action taken. The Board may, at its discretion, call upon the Supervisor to explain the action. The final disposition of the appeal shall be in the form of a resolution, either reserving, modifying, or affirming, in whole or in part, the appealed decision or determination. In order to find for the appellant, a majority of the Board must concur. The Board of Appeals shall fix a reasonable time for the hearing of the appeal, give due notice thereof to interested parties, and decide the same within a reasonable time. Within the limits of its jurisdiction, the same Board of Appeals may reserve or affirm, in whole or in part, or may make such order, requirements, decision or determination as, in its opinion, ought to be made in the case under consideration, and to that end have all the powers of the official from whom said appeal is taken. The decision of said Board shall be final.

The Board of Appeals shall meet at such times as the Board may determine. There shall be a fixed place of meeting and all meetings shall be open to the public in accordance with applicable laws. The Board shall adopt its own rules or procedure and keep a record of its proceedings, showing findings of fact, the action of the Board, and the vote of each member upon each question considered. The presence of four (4) members shall be necessary to constitute a quorum.

**Section 40.4 Payment of Amounts Outstanding.** All Sewer Rates and Charges outstanding during any appeal process shall be due and payable to the Township. Upon resolution of any appeal, the Township shall adjust such amounts accordingly; however, such adjustments shall be limited to the previous one year's billing unless otherwise directed by court order.

**Section 40.5 Effect of Administrative Action.** If any informal or formal hearing is not demanded within the periods specified herein, such administrative action shall be deemed final. In the event either or both such hearings are demanded, the action shall be suspended until a final determination has been made, except for immediate cease and desist order issued pursuant to this Ordinance.

**Section 40.6 Appeal from Board of Appeals.** Appeals from the determinations of the Board of Appeals may be made to the Circuit Court for the County of Kent within twenty (20) days as provided by law.

#### **NOTICE AND CLAIM PROCEDURES FOR SEWER OVERFLOW OR BACKUP**

**Section 40.7 Notice and Claim Procedures Applicable to Overflow or Backup of the Public Sewer System.** This Section has been adopted in accordance with Act 222 to set forth the notice and claim procedures applicable to an overflow or backup of the Public Sewer System, which, as defined in Act 222, shall be referred to for purposes of this Article as a "Sewage Disposal System Event." To afford property owners, individuals and the Township greater efficiency, certainty and consistency in the provision of relief for damages or physical injuries caused by a Sewage Disposal System Event, the Township and any Person making a claim for economic damages, which, as defined in Act 222 and this Ordinance, shall be referred to for purposes of this Section as a "Claimant," shall follow the following procedures:

- A. A Claimant is not entitled to compensation unless the Claimant notifies the Township of a claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered by the Claimant, or in the exercise of reasonable diligence should have been discovered by the Claimant.
- B. The written notice under subsection (a) shall contain the Claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim. As part of the description of the claim, the Claimant shall submit an explanation of the Sewage Disposal System Event and reasonable proof of ownership and the value of any damaged personal property. Reasonable proof of ownership and the purchase price or value of the property may include testimony or records. Reasonable proof of the value of the property may also include photographic or similar evidence.
- C. The written notice under subsection (a) shall be sent to the Township Supervisor, who is hereby designated as the individual at the Township to receive such notices pursuant to Section 19 of Act 222.
- D. If a Claimant who owns or occupies affected property notifies the Township orally or in writing of a Sewage Disposal System Event before providing a notice of a

claim that complies with subsections (a), (b) and (c), the Township Supervisor shall provide the Claimant with a written explanation of the notice requirements of subsections (a), (b) and (c) sufficiently detailed to allow the Claimant to comply with said requirements.

- E. If the Township is notified of a claim under subsection (a) and the Township believes that a different or additional governmental agency may be responsible for the claimed property damages or physical injuries, the Township shall notify the contacting agency of each additional or different governmental agency of that fact, in writing, within 15 business days after the date the Township receives the Claimant's notice under subsection (a).
- F. If the Township receives a notice from a Claimant or a different or additional governmental agency that complies with this Section, the Township may inspect the damaged property or investigate the physical injury. A Claimant or the owner or occupant of affected property shall not unreasonably refuse to allow the Township or its duly authorized representatives to inspect damaged property or investigate a physical injury.
- G. Prior to a determination of payment of compensation by the Township, the Claimant shall provide to the Township additional documentation and proof that:
  - 1. At the time of the Sewage Disposal System Event, the Township owned or operated, or directly or indirectly discharged into, that portion of the Public Sewer System that allegedly caused damage or physical injury;
  - 2. The Public Sewer System had a defect;
  - 3. The Township knew, or in the exercise of reasonable diligence, should have known, about the defect in the Public Sewer System;
  - 4. The Township, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct or remedy the defect in the Public Sewer System; and
  - 5. The defect in the Public Sewer System was a proximate cause that was 50% or more of the cause of the Sewage Disposal System Event and the property damage or physical injury.
- H. Prior to a determination of payment of compensation by the Township, the Claimant shall also provide to the Township additional documentation and proof that neither of the following were a proximate cause that was 50% or more of the cause of the Sewage Disposal System Event:

An obstruction in a Sewer Lateral or a Building Sewer that was not caused by the Township; or,

A connection on the affected premises, including, but not limited to, a footing drain, sump system, surface drain, gutter, down spout or connection of any other sort that discharged any storm water, surface water, ground water, roof runoff, sub surface drainage, cooling water, unpolluted air conditioning water or unpolluted industrial process waters to the Public Sewer System.

- I. If the Township and a Claimant do not reach an agreement on the amount of compensation for the property damages or physical injury within 45 days after the receipt of notice under subsection (a), the Claimant may institute a civil action in accordance with Act 222.
- J. To facilitate compliance with this Section, the Township shall make available to the public information about the notice and claim procedures under this Section.
- K. The notice and claim procedures set forth in this Section shall be applicable to a Sewage Disposal System Event involving the Public Sewer System.
- L. The Township does not own or operate any Storm Sewer, Storm Drain or combined sewer and, accordingly, the notice and claim procedures set forth in this Section, with the exception of subsection (e), do not apply to a Sewage Disposal System Event involving a Storm Sewer, Storm Drain or a combined sewer.
- M. In the event of a conflict between the notice and claim procedures set forth in this Section and the specific requirements of Act 222, the specific requirements of Act 222 shall control.
- N. As provided in Section 19(7) of Act 222, the notice and claim procedures of this Section do not apply to claims for non-economic damages (as defined in Act 222) arising out of a Sewage Disposal System Event.
- O. Any word, term or phrase used in this Section, if defined in Act 222, shall have the same meaning provided under Act 222.

## ENFORCEMENT

**Section 40.8 Inspection by Township.** The duly authorized representatives, employees or agents of the Township, including, but not limited to, the Inspector, the Township Supervisor, the Township's engineer, the Health Department and representatives of MDEQ bearing proper identification shall be permitted to enter at any time during reasonable or usual business hours in and upon all properties in the Service District for the purposes of inspection, observation, measurement, sampling, testing and emergency repairs in accordance with the provisions of this Ordinance. Any Person who applies for and receives sewer services from the Township or owns real property in the Service District shall be deemed to have given consent for all such activities including entrance upon that Person's property.

**Section 40.9 Damage to System.** No unauthorized Person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with, climb upon, or enter into any structure, appurtenance, or equipment of the Public Sewer System.

**Section 40.10 Notice to Cease and Desist.** Except for violations of Section 1102 hereof, any Person found to be violating any provision of this Ordinance shall be served by the Township with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

**Section 40.11 Civil Infraction.** Any violation of Section 1102, or any violation beyond the time limit provided for in Section 1103, shall be a municipal civil infraction, for which the fine shall not be less than \$100 nor more than \$500 for the first offense and not less than \$200 nor more than \$2,500 for subsequent offenses, in the discretion of the Court, and in addition to all other costs, damages, and expenses provided by law. For purposes of this Section, “subsequent offense” means a violation of this Ordinance committed by the same person within 12 months of a previous violation of the Ordinance for which said person admitted responsibility or was adjudicated to be responsible, provided, however, that offenses committed on subsequent days within a period of one week following issuance of a citation for a first offense shall all be considered separate first offenses. Each day that such violation occurs shall constitute a separate offense. Any person violating any of the provisions of this Ordinance shall, in addition, become liable for any expense, including reasonable attorney fees, loss, or damage occasioned by reason of such violation. The Supervisor is hereby authorized to issue, in the manner provided by law, citations for municipal civil infractions for violations of this Ordinance.

**Section 40.12 Nuisance; Abatement.** Any Nuisance or any violation of this Ordinance is deemed to be a nuisance per se. The Township in the furtherance of the public health may enforce the requirements of this Ordinance by injunction or other remedy and is hereby empowered to make all necessary repairs or take other corrective action necessitated by such nuisance or violation. The Person who violated the Ordinance or permitted such nuisance or violation to occur shall be responsible to the Township for the costs and expenses, including reasonable attorney fees, incurred by the Township in making such repairs or taking such action as a Miscellaneous User Fee.

**Section 40.13 Liability for Expenses.** Any Person violating any of the provisions of this Ordinance shall become liable to the Township and their authorized representatives for any expense, including reasonable attorney’s fees, loss, or damage incurred by the Township by reason of such violation. Such expenses may be imposed against a User of the system as a Miscellaneous Customer Fee.

**Section 40.14 Remedies are Cumulative.** The remedies provided by this Ordinance shall be deemed to be cumulative and not mutually exclusive with any other remedies available to the Township.

## MISCELLANEOUS

**Section 40.15 Repeal of Conflicts.** All ordinances or parts of ordinances in conflict herewith and relating to the Public Sewer System are hereby repealed.

**Section 40.16 Severability.** The validity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

**Section 40.17 State and Federal Law Requirements.** If any provision of applicable state or federal law imposes greater restrictions than are set forth in this Ordinance then the provisions of such state or federal law shall control.

**Section 40.18 Article and Section Headings.** The Article and Section headings used in this Ordinance are for convenience of reference only and shall not be taken into account in construing the meaning of any portion of this Ordinance.