

AN ORDINANCE AMENDING CHAPTER 13.12 (SEWER SERVICE SYSTEM), SUBCHAPTER 13.12.260 ENTITLED "SPECIAL AGREEMENTS" TO REQUIRE CERTAIN USERS TO ENTER INTO AN END USER SEWER AGREEMENT PRIOR TO CONNECTION TO THE TOWNSHIP OF BERKELEY HEIGHTS SEWER SERVICE SYSTEM

WHEREAS, the Township of Berkeley Heights ("Township") runs a Sewer Service System that services the Township at portions of the Borough of Watchung and the Township of Warren; and

WHEREAS, the Township has determined that certain users seeking connections to discharge to said Sewer Service System may have outsized impacts on said system; and

WHEREAS, the Township has determined that it is necessary and appropriate to require that said users enter into an "End User Agreement" prior to connecting to the System.

NOW, BE IT THEREFORE ORDAINED, by the Township Council of the Township of Berkeley Heights in the County of Union and State of New Jersey that Chapter 13.12 (Sewer Service System), Subchapter 13.12.260 (Special Agreements) shall be amended as follows (deletions indicated ~~thusly~~ and additions indicated thusly):

Section I

Chapter 13.12.260 is hereby amended as follows:

No statement contained in this chapter shall be constructed as preventing any special agreement or arrangement between the township and any industrial, **commercial, residential, or other** large concern whereby a waste of large or **unusual** volume, strength and/or character may be accepted by the township, subject to payment therefor by the concern. **If, in the opinion of the Township Engineer, Sewer Department Superintendent, or Township Sewer Engineer, the proposed connection warrants such special agreement or arrangement, the proposed user shall be required to enter in an "End User Sewer Agreement" prior to making connection to the Township of Berkeley Heights Sewer System, the form of which shall be substantially similar to Agreement annexed to this Chapter as Exhibit A, with such revisions as may be required to address the unique circumstances of each user.**

Section II

All ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section III

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to this section, paragraph, subdivision, clause or provision and the remainder of this Ordinance shall be deemed valid and effective.

Section IV

This ordinance shall take effect upon adoption and publication in the manner required by New Jersey general law but, in no event, less than 20 days after its final passage by the Township

Council and approval by the Mayor, where such approval is required pursuant to N.J.S.A. 40:69A-181(b).

INTRODUCED the 3rd day of November, 2021.

ADOPTED the 23rd day of November, 2021.

By: 
Angie Devanney, Mayor

ATTEST:


Ana Minkoff, Township Clerk

**NOTICE OF
INTRODUCTION**

Ordinance -2021

AN ORDINANCE AMENDING CHAPTER 13.12 (SEWER SERVICE SYSTEM), SUBCHAPTER 13.12.260 ENTITLED "SPECIAL AGREEMENTS" TO REQUIRE CERTAIN USERS TO ENTER INTO AN END USER SEWER AGREEMENT PRIOR TO CONNECTION TO THE TOWNSHIP OF BERKELEY HEIGHTS SEWER SERVICE SYSTEM

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights , do hereby certify that the foregoing Ordinance was introduced on First Reading at a meeting of the Township Council of the Township of Berkeley Heights, County of Union and State of New Jersey, on **November 3, 2021** and that said Ordinance shall be submitted for consideration and final passage at the Public Hearing to be held on **November 23, 2021** at **7:00** p.m. or as soon thereafter, as practical, same can be considered, at the Municipal Building, 29 Park Avenue, Berkeley Heights, NJ, and or via Zoom: <http://zoom.us/s/3575747364>, if you need to enter a meeting ID it is: **357-574-7364**. At which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning the same. During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available in the Municipal Clerk's office in said Municipal Building, to the members of the general public who shall request the same.

**Ana Minkoff
Township Clerk**

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
BRAHIMAJ				<input checked="" type="checkbox"/>
COUTO	✓			
KINGSLEY	✓			
MEDEIROS	✓			
VARNERIN	✓			
YELLIN	✓			
TIE:				
MAYOR DEVANNEY				

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

NOTICE OF FINAL ADOPTION

Ordinance -2021

AN ORDINANCE AMENDING CHAPTER 13.12 (SEWER SERVICE SYSTEM), SUBCHAPTER 13.12.260 ENTITLED "SPECIAL AGREEMENTS" TO REQUIRE CERTAIN USERS TO ENTER INTO AN END USER SEWER AGREEMENT PRIOR TO CONNECTION TO THE TOWNSHIP OF BERKELEY HEIGHTS SEWER SERVICE SYSTEM

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights, County of Union, State of New Jersey, hereby certify that the above-entitled Ordinance was adopted on final Passage by the Township Council of the Township of Berkeley Heights at its meeting held on November 23, 2021.

**Ana Minkoff,
Township Clerk
Township of Berkeley Heights**

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
BRAHIMAJ	✓			<input type="checkbox"/>
COUTO	✓			
KINGSLEY	✓			
MEDEIROS				✓
VARNERIN	✓			
YELLIN	✓			
TIE:				
MAYOR DEVANNEY				

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

NOTICE OF FINAL ADOPTION

Ordinance -2021

AN ORDINANCE AMENDING CHAPTER 13.12 (SEWER SERVICE SYSTEM), SUBCHAPTER 13.12.260 ENTITLED "SPECIAL AGREEMENTS" TO REQUIRE CERTAIN USERS TO ENTER INTO AN END USER SEWER AGREEMENT PRIOR TO CONNECTION TO THE TOWNSHIP OF BERKELEY HEIGHTS SEWER SERVICE SYSTEM

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights, County of Union, State of New Jersey, hereby certify that the above-entitled Ordinance was adopted on final Passage by the Township Council of the Township of Berkeley Heights at its meeting held on November 23, 2021.

**Ana Minkoff,
Township Clerk
Township of Berkeley Heights**

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
BRAHIMAJ	✓			☐
COUTO	✓			
KINGSLEY	✓			
MEDEIROS				✓
VARNERIN	✓			
YELLIN	✓			
TIE:				
MAYOR DEVANNEY				

END USER SEWER AGREEMENT

THIS AGREEMENT, made this _____, day of _____, 202__, by and between,
_____, a _____ corporation
(hereinafter referred to as " _____ " or "User"); and

TOWNSHIP OF BERKELEY HEIGHTS, a municipal corporation in the County of Union, a Municipal Corporation of the State of New Jersey, having an address at 29 Park Avenue, Berkeley Heights, New Jersey 07922 (hereinafter referred to as "Berkeley Heights" or "Township").

WHEREAS, User is seeking approval from Berkeley Heights of the discharge of mixed, untreated wastewater in the Township's sanitary sewerage system originating from the property identified as Block _____, Lot _____ located at _____ in the Township of Berkeley Heights (the "Property"); and

WHEREAS, the Township and User are desirous of entering into an agreement to permit User to utilize a connection into the Township's sanitary sewerage system, and the Township's acceptance of mixed, untreated wastewater from User, in accordance with the terms and conditions herein set forth herein.

NOW, THEREFORE, for and in good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and obligations hereinafter set forth, and pursuant to the Ordinances adopted by Berkeley Heights, and the Statutes of the State of New Jersey, in such case made, including but not limited to Chapters 62 and 63 of Title 40 of the Revised Statutes of New Jersey, User and the Township hereby agree as follows:

FIRST: That subject to the limitations and conditions contained herein, User shall be entitled to discharge untreated wastewater generated through normal process operations into the sanitary sewage system of Berkeley Heights, and Berkeley Heights shall be obligated to receive and dispose of the same.

SECOND: The Maximum amount of untreated wastewater to be discharged into Berkeley Heights system is hereby fixed at an amount not to exceed _____ gallons per day (GPD), constant stream, in any given 24-hour period. The following are the anticipated flow rates listed in gallons per day (GPD):

<u>Flow Rate</u>	<u>Duration</u>
_____ GPD	per day
_____ GPM	instantaneous

Total Duration: 24 hours per day, 365 day per year

Pursuant to N.J.A.C. 7:14A-1, flow in excess of 25,000 GPD shall necessitate a NJDEP-SIU permit, subject to New Jersey Department of Environmental Protection's (NJDEP's) requirements. Should the flow exceed 25,000 GPD, User shall immediately advise the Superintendent of the Berkeley Heights Wastewater Treatment Plant and shall contact NJDEP to determine whether a NJDEP-SIU permit is required. Under no circumstances, however, shall the flow exceed the anticipated flow rates listed above without the express written consent of the Township, which is in the sole and absolute discretion of the Township.

Payment for all flows, including those in excess of the anticipated flow rates listed above, shall be paid for in accordance with clause SEVENTH below.

The discharge will be from wastewater generated from usage of the subject site as a matter of normal day-to-day business per the approved use(s) on site. Sewage shall meet the standards of the Ordinance of Berkeley Heights entitled "An Ordinance to regulate the Disposal of Sewage..." duly adopted April 4, 1956, and as it may be amended from time to time. The construction of sewer lines and lateral with appurtenances on the User's site shall meet the standards of the Ordinance entitled, "An Ordinance to Regulate the Construction of Lateral, Interceptor and Trunk Sanitary Sewers..." duly adopted February 1, 1956, and as it may be amended from time to time.

Prior to connection, the User must provide any documentation requested by the Township describing the nature of the wastewater to be discharged into the Berkeley Heights system and the nature of any materials that may be stored on the site.

Any user flowing equal to or greater than 2,000 GPD shall, prior to being permitted to make connection to the Berkeley Heights sewage system, pay for any and all studies regarding sewer capacity or sewage system maintenance, including, but not limited to downstream studies, determined to be necessary by Berkeley Heights, in its sole and absolute discretion, and thereafter pay for upgrades necessitated by the use of the Property.

The User shall be required to perform a hydraulic evaluation of the existing Township sewer system, identifying any impacts from the proposed project, capacity issues and/or confirming adequacies of the receiving downstream sanitary facilities/systems and its appurtenances. Same must be prepared and certified by a NJ Licensed Professional Engineer, and same submitted to the Township for review. The Applicant/Developer is responsible for all costs associated with this study.

THIRD: The capacity of the Berkeley Heights Sanitary Sewer system utilized for the purpose of this agreement is to be as referred to in clause SECOND above

FOURTH: User shall pay reasonable legal fees in connection with the negotiation of this agreement. User shall pay Berkeley Heights inspection fees, with respect to construction within Berkeley Heights and reasonable expense of acquisition of right-of-way as may be needed within the limits of Berkeley Heights should connection line repairs become necessary. User shall pay any other reasonable expenses incurred in connection with this project, including engineering, construction supervision, surveying, preparation and maps and record plans and the like. The site has an existing, suitable connection. A suitable flow meter shall be installed to measure the actual process wastewater volume from User. Said meter will be provided, monitored, repaired, maintained, and replaced, when necessary, by User at its sole expense. Documentation of the meter activities, as detailed above, shall be forwarded to the Berkeley Heights Sewer Department Superintendent within 15 days of the end of each monitoring month.

FIFTH: All premises (except property under the control of User) within Berkeley Heights adversely affected by any necessary connection line repairs directly and solely attributable to User's discharge shall be restored, as nearly as practicable, to its original condition by User at its own expense. Said work shall be done to the satisfaction of the Berkeley Heights Township Engineer or his representative and may be required to be bonded to Berkeley Heights in amounts agreeable to Berkeley Heights both as to performance and maintenance. If any ground settling occurs during a period of one (1) year after completion of work, User shall restore the same immediately (weather permitting) to the satisfaction

of said Engineer or his representative. Record plans shall be filed with Berkeley Heights.

SIXTH: Should connection line repairs become necessary to be constructed on the User property served by Berkeley Heights, these repairs shall be at all times under the supervision of a competent professional engineer pursuant to the plan and specifications approved by the Berkeley Heights Township Engineer. Sewer connections on the User's site served by Berkeley Heights shall comply with provisions of the Berkeley Heights Ordinance referred to in clause SECOND above. User grants to Berkeley Heights the right of inspection, without cost to User by the Berkeley Heights Township Engineer, Berkeley Heights Sewer Department Superintendent, or representatives of the same, of the User premises served by Berkeley Heights, within reasonable hours, during the term of this agreement. To the extent practicable, all Berkeley Heights representatives shall provide at least 24 hours advance notice of inspection.

Inspections and testing of the process wastewater shall occur at commencement, and thereafter once per calendar month for the first year following commencement, and following that, once per calendar quarter, for the following parameters:

- pH (between 6.0 & 9.0)
- TSS (below 350 mg/L)
- Total Dissolved Solids (below 6,500 mg/L)

Note: mg/L = milligrams per liter or parts per million

Inspections and testing of the process wastewater shall occur at commencement, and twice per calendar year thereafter for the following parameters:

- BOD (below 300 mg/L)

- Oil & Grease (below 100 PPM)
- Total Phosphorus (below 0.76 mg/L)
- Total Nitrates (below 23.1 mg/L)

Note: mg/L = milligrams per liter or parts per million

To the extent any inspection or testing obligations apply to a partial calendar month, quarter or year, as applicable, the parties will cooperate to determine the appropriate testing frequency for that partial calendar month, quarter or year.

User shall also monitor and report sampling analysis of any suspected or anticipated substances in addition to the parameters above, upon request, to ensure no significant adverse impact on the Berkeley Heights WPCP. Said reports shall be provided to the Berkeley Heights Sewer Department Superintendent as soon as reasonably practicable following receipt by User of the sampling results.

All sampling shall be in accordance with the Berkeley Heights NJPDES permit and Department of Environmental Protection procedures. All analysis shall be done by a New Jersey certified Laboratory. Should during the course of the agreement NJDEP require any action as a result of a discharge limit or surface water standard exceedance, User will agree to take corrective action and assume all costs for same if the exceedance is determined to be directly and solely a result of User's discharge. User shall provide daily and instantaneous maximum flow volumes, which shall be reported to Berkeley Heights on a monthly basis, within 15 days of the end of the monitoring month.

SEVENTH: That User shall pay to Berkeley Heights thirty (30) days after presentation of bills therefore, for capacity rights, rental and treatment costs, the following

charges:

- a. \$0.025 per gallon use charge billed monthly based on User's metered flow into the Berkeley Heights sewer system. Following the second year of this agreement, the parties will discuss in good faith whether this charge should be adjusted based on the implementation of the agreement to date.
- b. 1.75% of the total Berkeley Heights Sewer Department Annual Capital Improvements Plan Expense.
- c. The charge for any use not provided for above shall be negotiated between Berkeley Heights and User and approved by their respective governing bodies for the term of this agreement. Failure to agree shall be resolved by arbitration as provided herein.

Notwithstanding the effective date of this agreement, charges in Seventh shall commence once User has begun discharging and shall be prorated to account for any period of time before User began discharging.

EIGHTH: If User requests a change in capacity rights, this agreement may be renegotiated at the sole discretion of the Township.

NINTH: This agreement shall continue, subject to the limitations contained herein, for a period of 5 years from the date of acceptance by both parties, and shall be automatically renewed on a yearly basis, absent a notice of termination by either party. Any notice of termination must be in writing and must be provided 6 months in advance of such termination. Providing no notice of termination has been given, during the last six (6) months of the initial term of this agreement, the parties shall meet in good faith to review the terms of the agreement and negotiate any mutually satisfactory and equitable adjustments to the arrangement. The agreement shall remain in effect until mutually satisfactory terms are agreed upon. This agreement shall be binding upon the respective parties, their successors and assigns.

TENTH: User shall keep and maintain its sewer line to the point of entry into the

Berkeley Heights System in good order and condition, at its own cost and expense.

ELEVENTH: If User defaults in any of the terms of this agreement, and if such default continues for a period of fourteen (14) days after written notice thereof from Berkeley Heights to User, then Berkeley Heights may, at its option, stop the flow of process wastewater into its sewerage facilities, but such actions will not constitute a waiver of any of its rights to enforce this agreement.

TWELFTH: User shall pay Berkeley Heights liquidated damages in the event grit, sand, gravel, dirt, pebbles, wood or other debris arrives at the central sewage treatment plant of Berkeley Heights, and it is determined that the same entered the system within User by reason of the acceptance of surface waters through open manholes or open lines, such damages to be fifteen hundred dollars (\$1,500.00) per occurrence.

THIRTEENTH: In the event the required parts of the Berkeley Heights sewer system shall be inoperative as a result of the act of any Federal, State or Municipal authority or as a result of causes beyond the control of either party hereto, then in any of such events, payments by User shall cease to accrue pro tanto during such period, and Berkeley Heights shall be relieved of its obligation to furnish facilities during such period.

FOURTEENTH: This agreement shall be submitted to, and is subject to the review, approval or disapproval of, the State Department of Environmental Protection, if required by law, or any other entity whose approval is required pursuant to law.

FIFTEENTH: User shall not, without the prior approval of Berkeley Heights, sell or assign its rights herein, or any portion thereof, to any other municipality, or any corporation, firm, partnership or individual user outside the described area, nor shall there

be any connection of sewers installed in the subject area to other sewers, lands or premises outside the subject area.

SIXTEENTH: Notwithstanding paragraph NINTH, if User shall decide to discharge all of its process wastewater through its own NJPDES permit, or otherwise decide to dispose of its process wastewater in an alternate manner, it may terminate this agreement upon written notice to Berkeley Heights two (2) months prior to such termination. If paragraph EIGHTH has been invoked, such notice shall thereafter be three (3) months. All engineering and other work to effect stoppage of sewage flow into the Berkeley Heights system shall be at the sole expense of User, but subject to approval and inspection by Berkeley Heights. In the event a NJDEP-SIU Permit is required as described in paragraph SECOND, User shall be responsible for all reasonable costs, expenses, engineering or legal expenses, fees or fines that Berkeley Heights may incur.

SEVENTEENTH: User, shall indemnify and save harmless Berkeley Heights for any expense, loss or damage occasioned by Berkeley Heights and its employees, officials, agents, and contractors directly and solely attributable to the discharge of any prohibited substance by User, including, but not limited to the following:

- A. Any significant cost incurred by Berkeley Heights in removing, correcting, preventing or terminating any significant adverse effects upon the Berkeley Heights wastewater collection and treatment system;
- B. Any significant increase in the cost of sludge processing or disposal;
- C. Any fines or penalties assessed against Berkeley Heights for such discharge;
- D. The reasonable costs of any investigative inspection or monitoring survey which leads to the establishment of a violation of this agreement and the reasonable costs of preparing and litigating any action successfully concluded against User for such violation; and

- E. Any other actual or compensatory damages to Berkeley Heights resulting directly and solely from the discharge.

User further agrees to defend, indemnify, and hold harmless Berkeley Heights, and its employees, officials, agents, and contractors from any and all claims, liabilities, damages, or judgments related in any way whatsoever to this Agreement or User's use of the Berkeley Heights wastewater collection and treatment system.

EIGHTEENTH: The mailing of written notice to, or the personal service upon, User and the Township Clerk shall be proper service of any notice required under the terms of this agreement.

Written notices to User shall be provided to:

With a copy to:

Written notices to the Township shall be provided to:

**Township of Berkeley Heights
Attn: Township Clerk
29 Park Avenue
Berkeley Heights, NJ 07922**

NINETEENTH: In the event of disagreement as to the meaning or interpretation of this agreement, or any part thereof, the same shall be referred to a Board of Arbitration mutually agreeable to both parties; otherwise, pursuant to the provisions of the New Jersey Revised Statutes in such case made and provided, i.e.,

N.J.S.A. 2A:24-1 et. seq. Such Board shall, in accordance with the rules and procedures of the American Arbitration Association, consider and decide the matters in dispute and such decision shall be binding upon both parties. Cost of such procedure shall be shared by Berkeley Heights and User.

TWENTIETH: If any section or provision of this agreement shall be declared to be invalid or otherwise ineffective, in whole or in part, such invalidity shall not be deemed to invalidate the remaining portions of this agreement, it being the intent that all provisions are severable and not dependent.

TWENTY-FIRST: This agreement has been executed in duplicate, each copy to be considered an original for all purposes.

TWENTY-SECOND: This agreement shall bind the parties hereto, their successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to besigned by their respective representative, the day and year first above written.

USER

Name/Title:

Township of Berkeley Heights

Mayor:

ATTEST

Township Clerk