

**Agenda No. O-8**

**CITY OF BAYONNE**

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF BAYONNE AMENDING CHAPTER 24 (WATER AND SEWER SERVICE) BY ADDING A NEW ARTICLE 24-3 ADOPTING AMENDED AND RESTATED WATER AND SEWER UTILITY RULES AND REGULATIONS AND CAPACITY ALLOCATION, RESERVATION, AND VESTING REQUIREMENTS**

**WHEREAS**, the City of Bayonne is the owner of water, sewer, and related utility systems, including those governed by Chapter 24 and the Rules and Regulations adopted herein (collectively, the “Systems”); and

**WHEREAS**, the Rules and Regulations and standard specifications governing the operation, maintenance, and construction of the Systems were last comprehensively updated on August 6, 2012 by the former Bayonne Municipal Utilities Authority (“BMUA”), which operated the Systems until December 20, 2012; and

**WHEREAS**, operation and maintenance of the Systems were thereafter transferred to a Concessionaire and Operator pursuant to a 40-year public-private Concession Agreement authorized under the New Jersey Water Supply Public-Private Contracting Act (N.J.S.A. 58:26-19 et seq.) and the New Jersey Wastewater Treatment Public-Private Contracting Act (N.J.S.A. 58:27-19 et seq.); and

**WHEREAS**, the Concession Agreement provides that Bayonne Water Joint Venture, LLC (the “Concessionaire”) and its designated Operator, currently Veolia Water Contract Operations USA, Inc. (the “Operator”), are responsible for the day-to-day operation, regulatory compliance, and capital improvement of the Systems, while the City retains ultimate regulatory authority; and

**WHEREAS**, the City dissolved the BMUA effective December 31, 2016 and assumed all rights, duties, and obligations relating to the Systems, including ownership, oversight of the Concession Agreement, and exclusive authority over the allocation and control of System Capacity; and

**WHEREAS**, the City’s existing Water and Sewer Rules and Regulations, last updated in 2012, require comprehensive modernization to reflect current regulatory requirements, operational conditions, engineering standards, and technological advancements; and

**WHEREAS**, the updated Rules and Regulations constitute a complete technical and

administrative modernization, including updated engineering design criteria, construction standards, inspection and testing requirements, environmental and safety provisions, and standard construction details, as well as modern GIS, CAD, and digital as-built data requirements necessary for accurate system mapping and long-term asset management; and

**WHEREAS**, the available potable water supply, sewer conveyance, and treatment capacity (collectively, “System Capacity” or “Capacity”) is finite and subject to physical infrastructure limitations, NJDEP regulatory constraints, upstream supply conditions, and operational considerations, and must therefore be managed and allocated in a fair, consistent, and legally defensible manner; and

**WHEREAS**, the City finds it necessary to establish a clear and predictable framework governing applications for water and sewer service, including a targeted review process for projects that materially increase demand, including projects exceeding three (3) equivalent dwelling units (EDUs), or otherwise impacting System Capacity; and

**WHEREAS**, the Rules and Regulations and this Ordinance are intended to ensure that all approvals relating to water and sewer service are revocable, conditional administrative determinations that do not create any vested rights, property interests, or entitlements to System Capacity or service, except as expressly provided herein; and

**WHEREAS**, the City further finds that Planning Board and Zoning Board approvals do not and shall not confer any right to water or sewer service or System Capacity, and shall not bind the City in its independent exercise of regulatory authority over such matters; and

**WHEREAS**, the updated Rules and Regulations establish strict requirements for construction, inspection, documentation, and acceptance of infrastructure, including the submission of accurate as-built and GIS data as a condition precedent to acceptance, in order to protect the City from premature dedication, system deficiencies, and long-term liability; and

**WHEREAS**, the purpose of this Ordinance and the Rules and Regulations adopted herein is to:

- update and clarify administrative procedures and technical standards governing the Systems;
- protect public health, safety, and welfare;
- ensure compliance with NJDEP and applicable law;
- provide a predictable and transparent framework for applicants and the public;

- preserve and equitably allocate limited System Capacity;
- prevent the creation of unintended or implied rights to capacity or service; and
- support orderly, sustainable development consistent with system capabilities; and

**WHEREAS**, the City further finds that, in order to facilitate orderly development and access to capital, it is necessary to establish a framework under which System Capacity may be conditionally reserved and, upon satisfaction of defined conditions, vested in a manner that is reliable and capable of being relied upon by Applicants and their lenders, while preserving the City’s regulatory authority, NJDEP compliance obligations, and protection of System integrity; and

**WHEREAS**, the Municipal Council intends that such Reservation and Vesting framework be legally enforceable but limited in scope, subject to the express conditions and limitations set forth in this Ordinance; and

**WHEREAS**, the City further finds that Reservation or Vesting of System Capacity shall not exempt any project from its proportionate share of infrastructure costs, and that any future assessments or charges shall be imposed on a nondiscriminatory basis and bear a reasonable relationship to the services or capacity provided.

**WHEREAS**, the Municipal Council finds that adoption of these updated Rules and Regulations is necessary and appropriate to protect the public interest, ensure regulatory compliance, and preserve the integrity and long-term functionality of the City’s water and sewer systems;

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF BAYONNE AS FOLLOWS:**

**Section 1. Amendment to Chapter 24.**

Chapter 24 of the Code of the City of Bayonne, entitled “Water and Sewer Service,” is hereby amended to add a new Article 24-3 immediately following Section 24-2, to be entitled:

**“Article 24-3 – Water and Sewer Utility Rules and Regulations; Capacity Allocation, Reservation, and Vesting.”**

Said Article 24-3 hereby adopts amended and restated Water and Sewer Utility Rules and Regulations, and establishes comprehensive requirements governing the allocation, reservation, and vesting of water and sewer system capacity, as more fully set forth herein and in Exhibit A attached hereto and incorporated by reference.

### **SECTION 24-3.1. Definitions**

The following terms, when capitalized in this Ordinance, shall have the meanings set forth below. Headings and alphabetical organization are for convenience only and shall not affect interpretation. Capitalized terms not defined herein shall have the meanings set forth in the Water and Sewer Utility Rules and Regulations adopted by this Ordinance, as may be amended from time to time.

The Water and Sewer Utility Rules and Regulations adopted as Exhibit A and incorporated herein by reference also includes defined terms for technical, engineering, operational, and administrative purposes. Certain defined terms in the Rules and Regulations may be identical to, or overlap with, definitions set forth in this Ordinance.

#### A. Controlling Definitions.

In the event of any conflict, inconsistency, or difference between a definition set forth in this Ordinance and a definition set forth in the Rules and Regulations, the definition set forth in this Ordinance shall control for all purposes related to:

- allocation, reservation, or vesting of System Capacity;
- the existence or scope of any right to water or sewer service; and
- interpretation or enforcement of this Ordinance.

#### B. Technical Definitions.

Definitions contained in the Rules and Regulations shall govern solely for technical, engineering, operational, and administrative matters, to the extent not inconsistent with this Ordinance.

#### C. No Expansion of Rights.

No definition, interpretation, or provision contained in the Rules and Regulations shall be construed to:

- create, expand, or modify any right to water or sewer capacity;
- establish vesting, reservation, or allocation of capacity; or
- override or conflict with the provisions of this Ordinance.

#### D. Harmonization.

To the extent reasonably possible, definitions in this Ordinance and the Rules and Regulations shall be interpreted in a consistent and complementary manner; however, no such interpretation shall override the express provisions of this Ordinance.

“2012 Rules” shall mean the Rules and Regulations previously adopted on August 6, 2012 under which the City, Concessionaire and Operator have been maintaining and operating the Systems.

“Allocation” shall mean a determination by the City, through the Director or Municipal Council as applicable, that a specified quantity of System Capacity, expressed in EDUs or other appropriate units, is identified for a proposed project. Allocation is an administrative or legislative determination only and shall not constitute a reservation, guarantee, or vesting of capacity.

“Applicant” shall mean a property owner, developer, or authorized agent seeking water and/or sewer service, capacity Allocation, Reservation, or Vesting.

“Application for Service” shall mean a submission by an Applicant requesting water and/or sewer service in accordance with the Rules and Regulations.

“BDMS Engineer” shall mean the Licensed Professional Engineer designated by the Director or Municipal Council to evaluate engineering standards and regulatory compliance.

“Capacity” shall have the same meaning as “System Capacity” below, the terms are used interchangeably herein and in the included Rules and Regulations.

“Certificate of Vesting” shall mean the written certification issued by the Director, as a ministerial act, confirming that all conditions required for Vesting under this Ordinance have been satisfied.

“City” shall mean the City of Bayonne, acting through its Municipal Council, Department of Municipal Services, or authorized officials.

“City Engineer” shall mean the Licensed Professional Engineer designated or retained by the City of Bayonne, acting through the Department of Municipal Services, to provide engineering review, analysis, and recommendations in connection with the City’s water and sewer systems and related applications. The City Engineer may also serve as the BDMS Engineer, or such roles may be performed by separate individuals or firms as designated by the Director. The City Engineer and BDMS Engineer shall act in an advisory and technical capacity and shall not have independent authority to approve or deny Applications with respect to applications involving an increase in system capacity, which authority is reserved exclusively to the City as provided in the Ordinance and these Rules and Regulations.

“Concession Agreement” shall mean the agreement between the City and the Concessionaire for the operation and maintenance of the City’s water and sewer systems, as may be amended.

“Concessionaire” shall mean the entity party to the Concession Agreement with the City, including its successors and assigns.

“Developer Agreement” or “Redevelopment Agreement” shall mean any agreement between the City and an Applicant governing the terms and conditions of development, including, where applicable, provisions relating to water and sewer capacity, infrastructure, or service.

“Director” shall mean the Director of the Department of Municipal Services, or such other designee authorized by the City, responsible for administration and implementation of this Ordinance.

“Equivalent Dwelling Unit” or “EDU” shall mean a unit of measure equal to 300 gallons per day of average flow, used to quantify water demand or sanitary sewer discharge for purposes of capacity evaluation and connection fees. EDUs shall be calculated separately for water and sewer systems based on applicable engineering standards and regulatory requirements.

“Final Approval” shall mean a valid, unexpired approval granted under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) or other applicable law authorizing a specific development. Final Approval shall not, by itself, constitute an Allocation, Reservation, or Vesting of System Capacity.

“Ministerial Act” shall mean an action performed in a prescribed manner without the exercise of discretion, upon verification that all required conditions have been satisfied.

“Municipal Council” shall mean the governing body of the City of Bayonne.

“Non-Binding Determination” shall mean any communication, review, or determination by the City or Operator that does not constitute an Allocation, Reservation, or Vesting and does not create any legal right or entitlement.

“Operator” shall mean the entity designated by the Concessionaire to operate and maintain the City’s water and sewer systems on a day-to-day basis.

“Reservation” shall mean a time-limited, conditional designation of System Capacity that is exclusively set aside for a specific project during the Reservation Period, and shall not be reallocated by the City to other applicants during such period, provided that the Applicant remains in compliance with all applicable conditions.

A Reservation:

1. Does not constitute a vested right;
2. May be relied upon by the Applicant and its lenders for financing purposes, subject to the terms and conditions of this Ordinance;
3. Establishes priority for the specified capacity during the Reservation Period;
4. Is subject to expiration, revocation, and all conditions set forth herein; and
5. Does not guarantee service except upon Vesting in accordance with this Ordinance and the applicable Rules and Regulations.

“System Capacity” also cited herein as “Capacity” shall mean the available potable water supply, distribution capacity, sewer collection capacity, and treatment capacity of the City’s water and sewer systems, including, where applicable, combined sanitary and stormwater flows, as determined by the City, with input from the Operator, based on limitations, including but not limited to: physical infrastructure; contractual supply arrangements; regulatory limitations and/or operational constraints.

“Vesting” or “Vested Capacity” shall mean the limited, enforceable right to utilize a specified quantity of System Capacity for a defined project, arising only upon satisfaction of all conditions set forth in this Ordinance and issuance of a Certificate of Vesting or adoption of a Municipal Council Resolution.

Upon Vesting:

1. Such right shall constitute a binding and enforceable contractual right of the Applicant, running with the project and enforceable against the City;
2. Such right may be relied upon by lenders and successors in interest;
3. The City shall not reallocate such vested capacity to other applicants;
4. Such right shall remain subject only to:
  - (a) NJDEP and other applicable regulatory requirements,
  - (b) force majeure or emergency system conditions,
  - (c) compliance with approvals and agreements governing the project.

“Will Serve Letter” shall mean a written communication issued by the Operator, the Director of Municipal Services or the City Engineer stating that System Capacity appears to be available for a proposed project as of a specific date. A Will Serve Letter is informational and tracking purposes only, does not constitute an Allocation, Reservation, or Vesting, creates no right to service or reliance, shall not be relied upon as a guarantee of any capacity, service, priority of allocation or other approval. It shall expire in accordance with the terms this Ordinance and be subject to the Rules and Regulations adopted hereunder. In the event of a conflict between this definition and that in the Rules and Regulation, the definition in this Ordinance shall control.

### **SECTION 24-3.2. Adoption of Utility Rules and Regulations**

- A. The City hereby adopts the Water and Sewer Utility Rules and Regulations, attached hereto as Exhibit A and incorporated herein by reference.
- B. These Rules and Regulations, Amend and Restate the Rules and Regulations last adopted on August 6, 2012 (the “2012 Rules”) pursuant to which the City and its Operator have been operating.
- C. The 2012 Rules shall remain in full force and effect until this Ordinance is effective at which time the 2012 Rules shall be superseded and replaced, except as expressly preserved herein. In avoidance of doubt, this means that obligations arising prior to the effective date of this Ordinance may still be fully pursued and enforced pursuant to the terms and provisions of the 2012 Rules. Obligations arising after said effective date shall be subject to this Ordinance and the Rules and Regulations adopted and incorporated herein.
- D. Any actions previously taken or ongoing under those prior 2012 Rules and Regulations are expressly confirmed and ratified. Any fees owed or obligations accrued prior to the effective date of this Ordinance shall remain in full force and effect and subject to collection, regulatory action and civil prosecution pursuant to those 2012 Rules.
- E. Any violation or non-compliance occurring prior to the effective date of this Ordinance can be acted upon, enforced and otherwise prosecuted in accordance with those Prior Rules and Regulations and applicable law.

### **SECTION 24-3.3. Water and Sewer Capacity; Applicability; Tracking; “Will Serve” Letters; Reservation and Vesting**

#### A. Purpose; Authority.

The City retains sole authority over the allocation, reservation, and vesting of water and sewer capacity. The Operator shall implement this section in accordance with the concession agreement and City rules. Nothing herein shall be construed to modify or impair the Concession Agreement. All actions shall be consistent with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and applicable NJDEP requirements.

#### B. Applicability.

- 1. This section applies to any project that requires new or additional water and/or sewer capacity, including new construction, expansion, or change in use resulting in increased demand or EDUs.

2. Projects requiring approvals from the New Jersey Department of Environmental Protection, including but not limited to Water Extension Permits (WEP) or Treatment Works Approvals (TWA), shall be subject to this section; however, applicability shall not be limited to such projects.
3. All development approvals issued by any municipal board shall be deemed conditioned upon compliance with this section.
4. No municipal board approval shall be deemed to allocate, reserve, or vest Capacity.
5. Nothing in any resolution, memorialization, or condition of approval of a municipal board shall bind the City with respect to System Capacity.

#### C. Exemptions.

The Reservation requirements of this section shall not apply to the following, provided that all applicable application, technical review, fee, permit, connection, and Rules and Regulations requirements remain applicable:

1. In-kind replacements or repairs with no increase in demand;
2. Projects that do not increase EDUs or flow as determined by the City Engineer;
3. Routine alterations or tenant fit-outs that do not change use or intensity.
4. For projects resulting in an increase of three (3) EDUs or less, processing may occur administratively and no Reservation shall be required. The City may aggregate related, phased, commonly owned, or functionally integrated applications for purposes of applying this threshold. No right to capacity shall vest for projects of three (3) EDUs or less unless and until all applicable conditions for Vesting under subsection G have been satisfied, including issuance of a building permit and payment of all applicable fees where required.

#### D. Capacity Tracking (Administrative Only).

The Operator shall maintain records of available, reserved, committed (unvested), and vested capacity based on system conditions, regulatory constraints, "Will Serve" letters issued by the Operator, and notification from the City (by the Director, City Engineer or their designee) of Reservation and Vesting approved by the Director or the Municipal Council. Such tracking is administrative only and creates no rights.

E. "Will Serve" Letters (Conditional; Non-Binding).

1. The Operator or Director may issue "Will Serve" letters.
2. Each letter shall be labeled "CONDITIONAL – NON-BINDING – NON-VESTING" and shall:
  - a. Identify the project and estimated EDU demand;
  - b. Reflect only a snapshot of apparent capacity;
  - c. State that it does not reserve or allocate capacity, does not create a right to service, does not guarantee service, and creates no reliance or estoppel rights;
  - d. Be subject to City ordinances, approvals under the Municipal Land Use Law, NJDEP requirements, payment of fees, and system availability at vesting and connection;
  - e. Shall not be relied upon as a guarantee of capacity, service, or approval, including for financing, planning, or land use purposes.
  - f. Expire 180 days from issuance and be void upon material change.
3. All such letters shall be logged by the Operator.
4. Issuance of a 'Will Serve' letter shall not establish priority in the allocation of capacity.

F. Reservation (Administrative; Time-Limited).

Upon application, and subject to the Applicant obtaining and maintaining all required approvals under the Municipal Land Use Law, and subject to revocation if such approvals are not obtained or maintained or are denied, the Director may issue a conditional Reservation, which:

1. Shall constitute a time-limited, conditional reservation of System Capacity exclusively set aside for the identified project;
2. Shall not constitute a vested right unless and until Vesting occurs;
3. Shall establish priority for the reserved capacity during the Reservation Period;
4. May be relied upon by the Applicant and its lenders for financing purposes, subject to compliance with all applicable conditions;
5. Shall not be reallocated to other applicants during the Reservation Period, provided the Applicant remains in compliance;
6. Shall expire in accordance with the terms set forth herein unless extended;

7. Automatically lapses upon expiration of underlying approvals or failure to proceed within 18 months of issuance unless expressly extended by Resolution of the Municipal Council.
8. A Reservation shall not survive expiration of underlying land use approval(s).

#### G. Vesting of Capacity.

##### 1. Exclusive Method.

Vesting does not guarantee the timing or availability of service and remains subject to System Capacity at the time of connection. Capacity shall vest only upon:

- a. Issuance of a Certificate of Vesting by the Director (ministerial), or
- b. Adoption of a Municipal Council resolution acknowledging vesting, including through a redevelopment agreement approved by resolution.

No correspondence, including “Will Serve” letters, shall create vesting. However, Vesting shall create a binding and enforceable right as expressly provided herein, and shall not be construed to create a general property right beyond the specific and limited right to utilize the vested System Capacity for the approved project.

Once all conditions for Vesting are satisfied, the City shall recognize such capacity as Vested and shall not deny or revoke such Vesting based on subsequent allocation of capacity to other users.

In the event that physical or operational constraints temporarily limit the ability to provide service, the vested project shall retain priority for service as capacity becomes available, subject to applicable regulatory and operational constraints.

##### 2. Mandatory Conditions (All Required).

All of the following must be satisfied:

- a. Valid, unexpired final approval under the Municipal Land Use Law;
- b. Execution of any required Developer or Redevelopment Agreement;
- c. Full payment of all applicable connection fees, capacity-related charges, review fees, escrows, and other charges lawfully imposed by ordinance, agreement, or the Rules and Regulations;
- d. Issuance of a Building Permit;
- e. Approval of final utility design by the City Engineer;

- f. Confirmation by the City Engineer, with input from the Operator, that sufficient physical, contractual, regulatory, and operational System Capacity exists at the time Vesting is sought;
- g. The Applicant shall proceed with construction in accordance with applicable approvals and within such timeframes as may be established in any Developer Agreement or approval; failure to do so may result in expiration of Vesting as provided therein.
- h. No lapse or material change in approvals or project scope, including but not limited to changes in use, intensity, unit count, or EDU demand; and
- i. Compliance with all NJDEP permits, including but not limited to WEP and TWA approvals, where applicable.

### 3. Director Certification (Ministerial).

Upon verification of all conditions, the Director shall issue a Certificate of Vesting. The Operator shall provide supporting data but shall not grant or deny vesting.

### 4. Council Acknowledgment.

The Municipal Council may, by resolution (including approval of a redevelopment agreement), acknowledge vesting, provided the resolution:

- a. Makes a finding that all conditions set forth in subsection G(2) have been satisfied;
- b. Specifies the vested use and EDUs; and
- c. Does not waive or modify ordinance requirements except by separate ordinance.

### H. Scope and Expiration.

- 1. All vested capacity remains subject to system availability including regulatory and operational constraints existing at the time of physical connection.
- 2. Vested capacity is limited to the approved use and EDUs.
- 3. Vested capacity expires if construction does not commence within 18 months as evidenced by issuance of footing or foundation inspections or if the building permit expires or is revoked, unless that time is extended by the Municipal Council.

4. Upon expiration, capacity reverts automatically without compensation.
5. Vested capacity shall not be assigned, transferred, or reallocated without approval of the City.

I. No Estoppel; No Implied Rights.

Except as expressly provided in Section 107 of the Rules and Regulations adopted by this Ordinance, no act, omission, statement, review, determination, approval, conditional approval, technical review, Will Serve Letter, capacity tracking, or other communication or conduct by the City, the Director, the Operator, the City Engineer, or any other officer, employee, or agent shall:

1. create or give rise to any vested right, property interest, or entitlement to System Capacity or service;
2. constitute a Reservation or Vesting of System Capacity;
3. be relied upon to establish any right to water or sewer service or capacity;
4. give rise to any claim of estoppel, waiver, or detrimental reliance against the City; or
5. limit or impair the City's authority to allocate, reserve, condition, deny, or revoke capacity or approvals in accordance with this Ordinance.

The sole source of any enforceable right to System Capacity shall be a valid Reservation or Vesting granted in strict accordance with Section 107 of the Rules and Regulations adopted hereunder.

J. Enforcement.

Unauthorized use or connection and non-compliance with the City's Utility Rules and Regulations adopted by the City consistent with this Ordinance shall be subject to enforcement as provided by Section 24-3.7 of this Ordinance and applicable law, including but not limited to N.J.S.A. 40:49-5 and N.J.S.A. 40:148-40.43.

**SECTION 24-3.4. Relationship Between Ordinance and Rules and Regulations**

The Rules and Regulations adopted as Exhibit A are intended solely to implement and administer the provisions of this Ordinance.

In the event of any conflict between this Ordinance and the Rules and Regulations, this Ordinance shall control.

The Rules and Regulations shall not alter, waive, or modify the capacity allocation, reservation, or vesting requirements established herein.

**SECTION 24-3.5. Authority to Amend Rules and Regulations**

The Director of Municipal Services (or such other City Officer or Official designated by subsequent resolution of the Municipal Council) may, on notice to the Operator in accordance with the Concession Agreement, and after soliciting advice from the Operator and the BDMS or City Engineer, amend the Rules and Regulations from time to time to address administrative, procedural, or technical matters, provided that such amendments do not affect the allocation, reservation, or vesting of capacity; and are consistent with all applicable laws and this Ordinance.

The Director (or such other City officer or official designated by resolution of the Municipal Council) shall have authority to:

- a. Interpret, apply, and administer the provisions of this Article and the Rules and Regulations;
- b. Make determinations necessary to implement the same;
- c. Require such additional information, studies, or documentation as reasonably necessary to evaluate capacity, compliance, and system impacts; and
- d. Approve, condition, or deny a Reservation based on system capacity, compliance, or other requirements of this Ordinance.

All such amendments must be in writing and shall be maintained on file and made available to the public.

**SECTION 24-3.6. Incorporation into Land Use Approvals.**

All approvals granted by any municipal board shall be deemed conditioned upon full compliance with the requirements of Section 24-3.3 of this Ordinance (Water and Sewer Capacity; Applicability; Tracking; ‘Will Serve’ Letters; Reservation and Vesting).

**SECTION 24-3.7. Fees, Charges, and Enforcement**

A. Collection of Fees and Utility Charges.

Utility service charges, connection fees, tapping fees, meter replacement costs, where applicable, and any related water and sewer utility charges allowed under applicable law shall be billed and collected by the Operator on behalf of the City in accordance with the terms of the Concession Agreement and applicable law.

B. Enforcement by City of Fines and Penalties.

1. All enforcement actions seeking civil fines or penalties and the prosecution of offenses for violation of this Ordinance shall be undertaken exclusively by the City and not by the Operator and pursued in the Municipal Court. Nothing herein limits the City's right to seek injunctive or equitable relief in Superior Court.
2. The Operator is, however, expressly allowed and encouraged to report violations and assist in providing evidence for the City's prosecution. The Operator also retains authority to refuse or suspend service for non-compliance in accordance with this Ordinance, the Utility Rules and Regulations, and applicable law, including where necessary to protect system operations in accordance with applicable standards.

C. Violations.

Any violation of this Ordinance or the Utility Rules and Regulations adopted hereunder shall constitute a violation of this Ordinance.

D. Penalties.

Violations shall be subject to penalties as permitted by N.J.S.A. 40:49-5 and the City's General Penalty Ordinance.

E. Additional Remedies.

The City may also enforce compliance by denial or termination of service; withholding permits, certificates of occupancy, or other municipal approvals; stop-work actions; and/or any other legal or equitable remedies available under law.

**SECTION 24-3.8. No Guarantee of Service**

Nothing in this Ordinance shall be construed to guarantee the availability or timing of water or sewer service.

**SECTION 24-3.9. Repealer**

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION 24-3.10. Savings and Severability**

A. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Municipal Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more portions may be declared invalid.

B. Savings Clause.

Nothing in this Ordinance shall be construed to:

1. Affect any vested rights lawfully obtained prior to the effective date of this Ordinance;
2. Impair any existing contract or obligation of the City, including but not limited to any concession agreement or duly authorized redevelopment agreement;
3. Waive or limit the City’s authority to enforce prior ordinances, approvals, or conditions applicable to any project; or
4. Create any right to water or sewer capacity except as expressly provided herein.

C. Continuation of Existing Approvals.

Any application, approval, or agreement existing as of the effective date shall remain subject to its terms; however, to the extent not inconsistent therewith, such applications and approvals shall also be subject to the provisions of this Ordinance.

**SECTION 24-3.11. Effective Date**

This Ordinance shall take effect upon final passage and publication in accordance with law.