

**MINUTES OF A REGULAR MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF MADISON**

**September 10, 2007 - 7p.m.**

**Call to Order**

The Regular Meeting of the Mayor and Council of the Borough of Madison was held on the 10<sup>th</sup> day of September 2007. Mayor Kerkeslager called the meeting to order at 7:00 p.m. in the Committee Room of the Hartley Dodge Memorial, Kings Road, in the Borough of Madison.

**Statement in Compliance with the Open Public Meetings Act**

The Borough Clerk read the statement pursuant to the Open Public Meetings Act:

"In compliance with the Open Public Meetings Act, adequate notice of this meeting of the Council was provided by publishing a copy of the meeting notice in the Madison Eagle and Morris County Daily Record, posting a copy on the bulletin board at the main entrance of the Hartley Dodge Memorial, and filing a copy in the office of the Clerk, all on January 4, 2007. Copies of said Notice were made available to members of the general public."

**Roll Call**

The Borough Clerk called the roll and the following acknowledged their presence:

Mayor Ellwood R. Kerkeslager

Council Members:

Mary-Anna Holden  
Astri J. Baillie  
Donald J. Bowen  
Carmela Vitale

John M. Elias

Robert H. Conley

Also Present:

Joseph Mezzacca, Jr., Borough Attorney

Marilyn Schaefer, Borough Clerk

Raymond M. Codey, Acting Administrator

**AGENDA REVIEW**

One Contract Matter was removed from the Executive Agenda and will be carried to the September 24, 2007 meeting. One Contract Matter was added to the Executive Agenda.

**Reading of Closed Session Resolution**

Mr. Elias moved:

**RESOLVED**, that the meeting be adjourned to an Executive Session to consider the following matters:

EXECUTIVE SESSION MINUTES (1)

Date of public disclosure 60 days after conclusion, if disclosure required.

PERSONNEL MATTERS (3)

Date of public disclosure 90 days after conclusion, if disclosure required.

CONTRACT MATTERS (9)

Date of public disclosure 60 days after conclusion, if disclosure required.

Seconded: Ms. Baillie

Vote: Unanimous voice vote

**Reconvene in Council Chamber**

Mayor Ellwood R. Kerkeslager reconvened the Regular Meeting at 7:50 p.m. in the Council Chamber with all members present. The Pledge of Allegiance was recited by all.

**APPROVAL OF MINUTES**

Mrs. Vitale moved approval of the **Regular Meeting Minutes of August 27, 2007**, with the following amendment to discussion #4 on Visualization Software:

.....the Downtown Development Commission (DDC) has offered to fund **Phase 1** the purchase in the amount of \$11,000.00.

Ms. Baillie seconded the motion, which passed with the following roll call vote recorded:

Yeas: Ms. Baillie, Mr. Bowen, Mrs. Vitale, Mr. Elias

Nays: None

Abstain: Mrs. Holden, Mr. Conley

Mrs. Vitale moved approval of the **Minutes of the Public Session of the Special Executive Meeting of September 4, 2007**. Mr. Bowen seconded the motion, which passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Mr. Bowen, Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

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Abstain: Ms. Baillie

Ms. Baillie moved approval of the ***Executive Minutes of August 27, 2007***. Mrs. Vitale seconded the motion, which passed by voice vote with Mrs. Holden and Mr. Conley abstaining.

Mrs. Vitale moved approval of the ***Special Executive Minutes of September 4, 2007***. Mr. Elias seconded the motion, which passed by voice vote with Ms. Baillie abstaining.

### ***GREETINGS TO PUBLIC***

Mayor Kerkeslager made the following comments:

#### Recognition

Mayor Kerkeslager gave recognition to Madison residents and former Madison residents who were killed during the September 11, 2001 attack on the World Trade Center in New York. Every year Morris County holds a major September 11<sup>th</sup> ceremony and remembrance; this occurred last evening and it was very well attended; the County remembers by name everyone from Morris County who was killed in the attack on September 11<sup>th</sup>. The County is continuing to move forward and hopefully before next year's ceremony, the ability will be expanded to recognize everyone who was killed on that day in 2001; the mechanism for doing that is being funded by private donations. Mayor Kerkeslager encouraged everyone to keep track of ceremonies announced in the Daily Record and Star-Ledger. The Mayor focused on recognizing the individuals from Madison who were killed; those who have visited Madison's memorial lately know there is a plaque which was dedicated in May 2002; the memorial was dedicated by the Borough of Madison in eternal memory to the Madisonians who lost their lives due to the acts of terrorism against our nation on September 11, 2001:

**James L. Crawford**

**Donald Peterson**

**Timothy R. Hughes**

**Jean Peterson**

**Patrick McGuire**

**Peter West**

Mayor Kerkeslager asked all present to join in a moment of silence in recognition of Madison victims, Morris County victims and all the victims of the World Trade Center disaster. (For background on Madison victims, see minutes from tribute of September 11, 2006.)

### ***PROCLAMATION***

Mayor Kerkeslager read and presented to Dr. James Hollenbach the following Proclamation:

**P r o c l a m a t i o n**

**of the**

**B o r o u g h o f M a d i s o n**

September 10, 2007

***Proclaiming***

***KIDS DAY AMERICA/INTERNATIONAL™***

***September 22, 2007***

**WHEREAS**, the health and well-being of children is our responsibility; and

**WHEREAS**, the safety of our children is a significant concern for parents, community leaders and health caregivers; and

**WHEREAS**, environmental welfare is of universal concern and deserves the utmost attention; and

**WHEREAS**, if started in childhood, proper health, safety and environmental habits can be maintained for a lifetime, producing a valued member of society and enhancing our community;

**NOW, THEREFORE**, I, Ellwood R. Kerkeslager, Mayor of the Borough of Madison, do hereby proclaim September 22, 2007 as KIDS DAY AMERICA/INTERNATIONAL™ in Madison, New Jersey. I urge that this day be dedicated to the efforts of Doctors of Chiropractic services in helping to educate all citizens on the importance of health, safety and environmental issues affecting our youth and our community.

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Ellwood R. Kerkeslager, Mayor

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Sister City Relationship with Marigliano

Marigliano has produced a version of their monthly magazine featuring all of the things that happened while Mayor Kerkeslager visited Marigliano; they gave a few copies of the magazine entitled "Follow Me Marigliano", which gives information, culture, curiosities, events, statistics, and is a city guide for work and free time in Marigliano. A special feature in the magazine is entitled "The Event – Marigliano-Madison, Special File for USA". A copy will be on file in the Office of the Clerk. They gave Mayor Kerkeslager a framed resolution and their "oath" to work together with Madison as sister cities to support education of children and cultural understanding between Marigliano and Madison on an ongoing basis.

**REPORTS OF COMMITTEES**

## **Community Affairs**

Mrs. Holden, Chair of the Committee, made the following comments:

Mrs. Holden thanked Mayor Kerkeslager for his remembrance of September 11, 2001, and mentioned that tomorrow, if anyone is available at 9 a.m., there will be a quiet remembrance at the memorial in James Park.

On Wednesday, September 12, 2007, at 6:30 p.m., the Chamber of Commerce will have a business card exchange at the Provident Bank.

On Friday, September 14, 2007, at 5 p.m., there will be a reception at Madison High School honoring Korean War Marine veteran and legendary Madison football coach Ted Monica; please wear your maroon and gold if you attend; the game can be enjoyed afterward.

On Monday, September 17, at 10:15 a.m., the Senior Center will begin their regular season of meetings, which will include a barbecue in the parking lot afterward.

Mrs. Holden called Council's attention to an interesting and extensive article in the business section of yesterday's Daily Record entitled "Morris' fields of dreams"; it focused on artificial turf, its cost and potential savings to towns; Mrs. Holden passed the article around.

## **Utilities**

Ms. Baillie, Chair of the Committee, made the following comments:

As Liaison to the Open Space, Recreation and Historic Preservation Advisory Committee, Ms. Baillie reported that the Council received from the State of New Jersey, Department of Environmental Protection, a letter indicating that the Madison United Methodist Church, 24 Madison Avenue, is being considered by the New Jersey State Review Board for Historic Sites for nomination to the New Jersey and National Registers of Historic Places. As the Liaison to the Open Space Advisory Committee, Ms. Baillie was very excited about this and wished them well, as this is one of the things that the Advisory Committee is encouraging; they put together a pamphlet on conservation easements and historic easements; it is nice to see a private entity looking to preserve its history.

## **Health & Public Assistance**

Mr. Bowen, Chair of the Committee, no report.

## **Public Works and Engineering**

Mrs. Vitale, Chair of the Committee, no report.

## **Finance and Borough Clerk**

Mr. Elias, Chair of the Committee, made the following comments:

Last Thursday the Morris County Municipal Joint Insurance Fund (JIF) held its 20<sup>th</sup> Anniversary event at Birchwood Manor; at that time, the JIF acknowledged Madison as one of the founding members for this program and presented Madison with a plaque and an attachment of a paper non-negotiable "check" in the amount of \$3,562,121.00 representing the estimated savings Madison realized through its participation in JIF over the past 20 years. The JIF also specifically

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acknowledged and recognized for his hard work and many contributions to its success our very own Robert Kalafut, the Borough's Chief Financial Officer; it is nice to see in this era of shared services one that really hit one out of the park and shows substantial benefits to the community.

## **Public Safety**

Mr. Conley, Chair of the Committee, made the following comments:

Mr. Conley read a letter dated August 26, 2007, from Daisy Baker of Madison to Chief Atchison reporting that on Saturday, August 25<sup>h</sup>, she returned from a walk to find one of her smoke detectors ringing away and the Police and Fire Departments already at her rental apartment; they soon found that one smoke detector was old and not in working order, though ringing non-stop; without delay, Firefighter Brian Tappan took care of the situation while calming the resident; he went back to the Fire Department and returned very quickly with a new, working smoke detector which he installed; Ms. Baker thanked the Borough for being there and said how very fortunate Madison is to have such wonderful protectors! Ms. Baker gave a special thanks to Brian Tappan, who left one very grateful resident. Mr. Conley reminded residents that seniors who need assistance with smoke detectors should contact the Fire Department, who will help out.

The Fire Department was dispatched to East Hanover last Friday evening for a hazardous materials call; Madison firefighters, along with other area departments, assisted Morris County Hazmat; a chemical substance was released into the sewer system and was considered highly combustible; a gas meter was utilized to take measurements and a decision was made to flush the system; the readings gradually dropped and safety was restored; firefighters were on the scene for approximately five hours.

**COMMUNICATIONS AND PETITIONS** - None

## **INVITATION FOR DISCUSSION (1 of 2)**

Mayor Kerkeslager opened the meeting to the public for their opportunity to ask questions and make comments. The Mayor asked that, upon recognition by the Chair, the person shall proceed to the lectern and give his/her name and address in an audible tone of voice, and print the same on the sheet provided for the record. ***He/she shall limit his/her statement to three (3) minutes or less.***

**Sam Cerciello, Park Avenue**, referred to the Daily Record article about Eastern Builders and Liberty Mutual, asked about who issued change orders, and spoke about his request for copies of records (OPRA request) made on September 6, 2007, for which he is still waiting; MrMezzacca explained how change orders are approved. Mr.Cerciello made critical statements and gave out figures; he stated that these are his own statements and are his own opinions. MrMezzacca explained that he himself negotiated with the surety and an agreement was made on September 4, 2007; the surety started today on takeover of the Fire & Police building project and have a completion date of 180 days from the signing of the agreement.

## **Agenda Discussions**

**09/10/07-1 VISUALIZATION SOFTWARE DEMONSTRATION**

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Two members of the software company were present and gave a visual demonstration of uses of the software for planned development in Madison; the Downtown Development Commission (DDC) has offered \$11,000.00 to purchase Phase 1 of the software; this amount does not include photos or tree streetscape renderings; the Council will get some written answers to questions such as what, if any, DDC action is required; future investments needed; how the program would be implemented in departments; how it would be carried forward in the budget; who would be responsible.

**09/10/07-2 MADISON PUBLIC LIBRARY CAPITAL BUDGET REQUEST FOR COMPLETION OF DRAINAGE SWALE DESIGN PHASE**

After a summary given by Library Trustee MarkSheeleigh and Council comments, Mrs. Holden moved approval of the Library request to transfer \$35,000.00 from the previously approved Library parking lot realignment study to the drainage ditch/swale stabilization design work, and increase funding by \$24,000.00 to \$142,000.00. Ms. Baillie seconded the motion, which passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

An ordinance is listed for introduction later in the meeting.

**09/10/07-3 DRAINAGE AGREEMENT TOWNSHIP OF CHATHAM**

Mr. Codey gave a summary of the request to authorize the Borough of Madison/ Chatham Township Interlocal Drainage Agreement; Mr. Codey spoke of a recent meeting with Councilwoman Vitale, Borough Engineer Robert Vogel and Borough Attorney Joseph Mezzacca, when Mr. Mezzacca was asked to finalize the subject agreement.

Mrs. Holden moved approval of the Drainage Agreement with the Township of Chatham. Mrs. Vitale seconded the motion, which passed by voice vote.

A resolution so authorizing is listed on the Consent Agenda.

**09/10/07-4 CABLEVISION ORDINANCE**

After comments by Mr. Mezzacca including that this ordinance gives Madison much more control over broadcasting meetings, Mr. Bowen moved approval of the Cablevision ordinance. Mrs. Vitale seconded the motion, which passed by voice vote.

An ordinance is listed for introduction later in the meeting.

**09/10/07-5 AMEND ORD 7-2007 TO INCREASE FUNDING TO \$50,000.00 TO PURCHASE NEW ENCLOSED GENERATOR FOR THE NORTH STREET SEWER PUMP STATION**

Mr. Bowen moved approval of Superintendent of Public Works David Maines' request for \$50,000.00 to purchase a new enclosed generator for the North Street Sewer Pump station. Mrs. Holden seconded the motion, which passed by voice vote.

An ordinance is listed for introduction later in the meeting.

**09/10/07-6 FIRE DEPARTMENT PAGERS**

Mr. Conley moved approval of Fire Chief Atchison's request to appropriate \$6,000.00 from the Fire Department Trust Account for Fire Department pagers. Mrs. Holden seconded the motion. Pagers are needed for members in the volunteer division; current pagers are 10 years old and in need of replacement. There was no further discussion and the motion passed by voice vote.

An ordinance is listed for introduction later in the meeting.

**09/10/07-7 INCREASE PLUMBING SUBCODE FEES TO 100% OF STATE FEE SCHEDULE**

Ms. Baillie moved approval of Construction Code Official Russell Brown's request to change plumbing subcode fees from 68% of the state fee schedule to 100% of the state fee schedule, and establish a minimum plumbing permit fee as previously recommended in 2006. Mrs. Holden seconded the motion, which passed by voice vote.

An ordinance is listed for introduction later in the meeting.

**09/10/07-8 SUPPORT APPLICATION FOR FUNDING THROUGH THE DCA BALANCED HOUSING PROGRAM FOR THE DEVELOPMENT AT 22 CENTRAL AVENUE**

Mrs. Vitale moved approval of Housing Authority Executive Director Louis A. Riccio's recommendation to support the application for funding through the DCA Balanced Housing Program for the development at 22 Central Avenue. Mr. Conley seconded the motion, which passed by voice vote with Mr. Bowen abstaining.

A resolution is listed on the Consent Agenda.

**09/10/07-9 RELEASE OF UP TO \$500,000 FROM THE HOUSING TRUST FUND FOR THE DEVELOPMENT OF THE FIREHOUSE APARTMENTS IN ACCORDANCE WITH THE APPROVED SPENDING PLAN**

Mrs. Vitale moved approval of Housing Authority Executive Director Louis A. Riccio's request for approval to release up to \$500,000.00 from the Housing Trust Fund for the development of the firehouse apartments (22 Central Avenue) in accordance with the approved spending plan. Mr. Conley seconded the motion, which passed by voice vote with Mr. Bowen abstaining.

A resolution will be listed on the September 24, 2007 Consent Agenda.

**09/10/07-10 AMEND HISTORIC PRESERVATION ORDINANCE TO INCLUDE BOTTLE HILL HISTORIC DISTRICT**

The Borough of Madison was notified by letter dated January 18, 2005, from the State of New Jersey Department of Environmental Protection that the Bottle Hill Historic District, James Park, Madison Borough, Morris County was entered onto the New Jersey Register of Historic Places on December 7, 2004. It was then sent to the National Park Service, U.S. Department of the Interior, Washington, D.C., to be considered for inclusion on the National Register of Historic Places.

The Madison Planning Board, on Tuesday, August 7, 2007, recommended that the Madison Governing Body adopt by ordinance the inclusion of the Bottle Hill Historic District in the Historic Preservation Ordinance.

Mrs. Vitale moved approval of the Planning Board recommendation. Mrs. Holden seconded the motion, which passed by voice vote.

An ordinance will be listed for introduction on the September 24, 2007 agenda.

**09/20/07-11 Madison Borough – Sewer Ordinance**

This ordinance was prepared by the Environmental Attorney and reviewed by Mr. Mezzacca. Mrs. Vitale moved approval of listing the Sewer Ordinance for introduction. Mr. Conley seconded the motion. There was discussion as to exactly what is prohibited and allowed to be introduced into the sewer system; things identified as questions should be taken back to the Joint Meeting for clarification; as to enforcement, how to identify someone who violates the ordinance; how it is intended to be enforced; the Superintendent of the Joint Meeting has the right to notify an owner to stop an actual discharge; upon advanced notice to the Borough, the Health Department could be notified; the recommendation to use the word "shall" rather than "may" within the ordinance as to enforcement by the Health Department was recommended.

At the conclusion of discussion, the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Ordinance 62-2007 is listed for introduction later in the meeting.

**INVITATION FOR DISCUSSION (2 of 2)**

Mayor Kerkeslager opened the meeting to the public for their opportunity to ask questions and make comments. The Mayor asked that, upon recognition by the Chair, the person shall proceed to the lectern and give his/her name and address in an audible tone of voice, and print the same on the sheet provided for the record. **He/she shall limit his/her statement to three (3) minutes or less.**

**Eugene Zipper, Greenwood Road**, gave suggestions for improving acoustics in the Council Chamber, such as moving the public chairs much closer to the Council table; the poor audio in this room has been allowed to persist. Mr. Zipper spoke of the Cablevision ordinance, which is non-exclusive, and reported his dissatisfaction with Cablevision's airing of Council Meetings on the public access channel. Mr. Zipper spoke about the Land Development Ordinance regarding fees; he felt the fees would be passed on to the consumer by the developer, so was not in favor of the ordinance.

**Sam Cerciello, Park Avenue**, made lengthy statements critical of many aspects of the Fire & Police building project inside and outside; Mr. Mezzacca responded that the Borough is proceeding to get the building finished and will proceed to do whatever else needs to be done after that.

Mayor Kerkeslager announced that on Bottle Hill Day, the Borough plans to have an open house at the new Fire & Police building where the general public may come and see for themselves where we stand; so Mayor Kerkeslager encouraged everyone coming for Bottle Hill Day to go over to the new building that day.

**Donald Brunner, Redmond Drive**, thanked Mr. Codey for information on the towing fees; asked why the towing fees were raised; he was advised that the Police Department has to maintain

availability of towers in town; the Borough raised the rates at the request of the Police Department because the State Police rates went up and that is the rate the towers receive elsewhere.

**Jim McCloskey, Dean Street**, mentioned that he comes to the Council meetings quite regularly, and complimented Mr. Elias on his statements as to thorough actions and investigations taken at the direction of the Mayor and Council in regard to the Fire & Police building. As to the subject of acoustics in the Council Chamber, the Mayor's microphone works well and the audience can hear well; when Council Members speak into the microphones, they can be heard; he recommended another microphone at the lectern.

### ***Advertised Hearings***

The Clerk made the following statement:

Ordinance 59-2007 scheduled for hearing tonight was submitted in writing, was introduced by title and passed on first reading at a Regular Meeting of the Mayor and Council held on August 13, 2007; the balance of ordinances scheduled for hearing tonight were submitted in writing, introduced by title, and passed on first reading at a Regular Meeting of the Mayor and Council held on August 27, 2007; each was published in the Madison Eagle and made available to members of the general public requesting same.

The Mayor called up Ordinances for second reading and asked the Clerk to read said ordinances by title:

**Introduced 08/13/2007**

**ORDINANCE 59-2007**

**ORDINANCE OF THE COUNCIL OF THE BOROUGH OF MADISON  
AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE  
ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF  
MADISON" TO REPLACE ARTICLE VIII, AS AMENDED BY ORDINANCE  
36-2007, ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES"**

**WHEREAS**, the Madison Planning Board previously recommended that the Madison Land Development Ordinance be amended to provide for the collection of affordable housing development fees in regard to eligible development projects within the Borough; and

**WHEREAS**, the Borough Council adopted Ordinance 19-2005, modified by Ordinance 36-2007, which was codified as Article VIII of the Madison Borough Code entitled "Affordable Housing Development Fees", Section 195-46; and

**WHEREAS**, Ordinance 19-2005, as modified by Ordinance 36-2007, contained inconsistencies and did not fully comply with the provisions of N.J.A.C. 5:94-6.1 et seq.; and

**WHEREAS**, the Borough Attorney has recommended that the Borough adopt a replacement for

Section 195-46 that will comply with the requirements of N.J.A.C. 5:94-6.1 et seq., and that such Ordinance shall be submitted to the Council on Affordable Housing for their approval pursuant to law.

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the Borough of Madison, County of Morris, State of New Jersey that:

**SECTION 1:** Article VIII, Section 195-46 of the Borough Code, entitled "Affordable Housing Development Fees" shall be completely replaced with the following:

## **ARTICLE VIII**

### **Affordable Housing Development Fees**

#### **Section 195-46: Affordable Housing Development Fees**

##### **A. Purpose.**

(1) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

##### **B. Basic requirements**

**(1) The Borough of Madison shall not spend development fees until COAH has approved a plan for spending such fees and the Borough of Madison has received third round substantive certification from COAH or a judgment of compliance.**

##### **C. Definitions**

(1) The following terms, as used in this ordinance, shall have the following meanings:

(a) "Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

(b) "COAH" means the New Jersey Council on Affordable Housing.

(c) "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.

(d) "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.

#### **D. Residential Development fees**

(1) Within all zoning districts(s) Developers of new residential housing, which shall include any residential development on an existing lot on which a former residential structure was located, within the Borough shall pay a fee of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

(2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(3) No fee shall be charged pursuant to this section for any addition or improvement to an existing residential structure, so long as such addition or improvement does not increase the equalized assessed value of the existing structure, as of the date hereof, by more than 50%.

#### **E. Non-residential Development fees**

(1) Within the all zoning district(s), non-residential developers shall pay a fee of two percent of the equalized assessed value for non-residential development

(2) If an increase in floor area ratio is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent of the equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

## **F. Eligible exactions, ineligible exactions and exemptions**

(1) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.

(2) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.

(3) Subject to the provisions of §195-46(D)(3), development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

(4) Developments that are providing for growth share or greater affordable housing pursuant to §195-48 and are subject to §195-48 shall not be subject to the development fee pursuant to this §195-46.

## **G. Collection of fees**

(1) Fifty percent of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

## **H. Contested fees**

(1) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Borough of Madison. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

## **I. Affordable Housing trust fund**

(1) There is hereby created a separate, interest-bearing housing trust fund for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this ordinance shall be deposited into this fund.

(2) Within seven days from the opening of the trust fund account, the Borough of Madison shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).

(3) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

## **J. Use of funds**

(1) Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.

(2) Funds shall not be expended to reimburse the Borough of Madison for past housing activities.

(3) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the Borough of Madison affordable housing obligation, at least 30 percent of the balance remaining shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

(a) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.

(b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the third round municipal Fair Share Plan to make them

affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle the Borough of Madison to bonus credits pursuant to N.J.A.C. 5:94-4.22.

(c) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

**(4) The Borough of Madison may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.**

(5) No more than 20 percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

## **K. Monitoring**

(1) The Borough of Madison shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, and the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

#### **L. Ongoing collection of fees**

(1) The ability for the Borough of Madison to impose, collect and expend development fees shall expire with its substantive certification on December 31, 2014 unless the Borough of Madison has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Borough of Madison fails to renew its ability to impose and collect development fees prior to December 31, 2014, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6. The Borough of Madison shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification on December 31, 2014 nor will the Borough of Madison retroactively impose a development fee on such a development. The Borough of Madison will not expend development fees after the expiration of its substantive certification on December 31, 2014.

**SECTION 2:** This ordinance shall take effect as provided by law.

Mayor Kerkeslager opened the hearing on the above ordinance and asked if anyone wished to be heard. Since no member of the public wished to be heard, the public hearing was closed.

Mrs. Vitale moved that Ordinance 59-2007, which the Clerk read by title, be finally adopted. Mr. Elias seconded the motion. Mr. Bowen was recognized by the Chair and expressed concerns and frustrations with sweeping state mandates that are largely outside of local control; therefore, he abstained as to approval of this ordinance. There was no further Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mrs. Vitale, Mr. Elias, Mr. Conley

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Nays: None

Abstain: Mr. Bowen

Mayor Kerkeslager declared Ordinance 59-2007 adopted and finally passed and asked the Clerk to publish notice thereof in the newspaper and file the ordinance in accordance with the law.

**Introduced 08/27/07**

**ORDINANCE 60-2007**

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 34 OF THE BOROUGH CODE ENTITLED "POLICE DEPARTMENT" TO REORGANIZE THE COMPOSITION OF THE POLICE DEPARTMENT**

**WHEREAS**, the Borough Chief of Police has recommended that Chapter 34 of the Borough Code entitled "Police Department" be amended to reorganize the composition and staffing of the Police Department; and

**WHEREAS**, the Borough Council agrees with this recommendation.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey that Chapter 34 of the Borough Code entitled "Police Department" shall be amended as follows:

SECTION 1: Section 34-1 entitled "Department established; composition" is hereby amended to read as follows:

§ 34-1. Department established; composition.

The Police Department of the Borough of Madison is hereby established and shall consist of a Chief of Police, and shall have one Captain, and shall have not more than three Lieutenants, not more than six Sergeants, and not more than 25 Patrol Officers, provided the full number of police officers shall not exceed 36 including the Chief of Police, and not more than two Class II special police officers as the Borough Council may from time to time appoint as requested by the Chief of Police.

SECTION 2: This Ordinance shall take effect as provided by law.

Mayor Kerkeslager opened the hearing on the above ordinance and asked if anyone wished to be heard. Since no member of the public wished to be heard, the public hearing was closed.

Mr. Conley moved that Ordinance 60-2007, which the Clerk read by title, be finally adopted. Mrs.

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Holden seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Mayor Kerkeslager declared Ordinance 60-2007 adopted and finally passed and asked the Clerk to publish notice thereof in the newspaper and file the ordinance in accordance with the law.

**Introduced 08/27/2007**

**ORDINANCE 61-2007**

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 14  
OF THE BOROUGH CODE REGARDING MUNICIPAL OFFICIALS AND  
EMPLOYEES**

**WHEREAS**, the Borough of Madison adopted § 14-1 and § 14-2 of the Code of the Borough of Madison which provides for reimbursement of legal fees, in limited circumstances, to employees of the Borough who incur these expenses arising out of their employment with the Borough; and

**WHEREAS**, it is in the best interests of the Borough to amend these sections in order to clarify the limitations and to provide that, in the event that the Borough indemnifies a municipal employee, the amount of such indemnification for attorneys fees shall be limited to a reasonable hourly rate not to exceed the hourly rate which the Borough compensates its Borough attorney.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey as follows:

(1) The last sentence of § 14-1 shall be replaced with: "The Borough Attorney or other attorney selected by the Borough Council shall represent the borough official or employee, at a cost not to exceed the hourly rate which the Borough compensates its Borough Attorney."

(2) Section 14-2 of the Code of the Borough of Madison shall be amended and replaced in its entirety as follows:

The Borough shall not defray the costs of defending any criminal action against any municipal employee except as may be authorized by state statute or other municipal ordinance or resolution of the Borough of

Madison, and, in those circumstances, the responsibility for defraying the costs of defending such employee shall be applicable only when such criminal proceedings shall have been dismissed or result in a final disposition in favor of the employee. Further, in the event that the Borough indemnifies the employee, the cost of that indemnification shall not exceed the hourly rate paid to the Borough attorney. Nonetheless, should the Borough Council determine that there is good cause to dismiss the employee arising out of the incident or related incidents of the criminal prosecution, the Borough will not reimburse the employee or official for legal defense and costs of defending the suit, even though criminal proceedings against the employee may be dismissed or the employee found not guilty.

(3) Section 14-4 of the Code of the Borough of Madison shall be amended and replaced in its entirety as follows:

14-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OFFICIAL OR EMPLOYEE -- Any person elected, appointed or employed, paid or unpaid, in any way connected with the municipal government of the Borough of Madison, except for persons appointed to committees having no powers other than to advise. Employee shall include all persons on the municipal payroll.

(4) **Repealer.** All Ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all Ordinances or part of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.

(5) **Severability.** The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand not withstanding the invalidity of any part.

(6) This Ordinance shall take effect upon passage and publication as provided by law.

(7) The Borough Clerk and the Borough Attorney are authorized and directed to change any Chapter, Article and/or Section numbers of the Code of the Borough of Madison, in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

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Mayor Kerkeslager opened the hearing on the above ordinance and asked if anyone wished to be heard. Since no member of the public wished to be heard, the public hearing was closed.

Mr. Bowen moved that Ordinance 61-2007, which was read by title, be finally adopted. MsBaillie seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Mayor Kerkeslager declared Ordinance 61-2007 adopted and finally passed and asked the Clerk to publish notice thereof in the newspaper and file the ordinance in accordance with the law.

### ***Introduction of Ordinances***

The Clerk made the following statement

Ordinances being introduced at this meeting will have a hearing at a Regular Meeting of the Council scheduled for September 24, 2007, at 7:45 p.m. or as soon as practical thereafter, except for Ordinance 64-2007, which will have a hearing at the Regular Meeting of the Council scheduled for Wednesday, October 10, 2007, at the same time and place of customary meetings of the Council, when interested parties will have an opportunity to be heard; each ordinance will be published, posted and made available to members of the public.

Mayor Kerkeslager called up ordinances for introduction and asked the Borough Clerk to read said ordinances by title:

### **ORDINANCE 62-2007**

### **ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 155 OF THE BOROUGH CODE ENTITLED "SEWERS"**

**BE IT ORDAINED**, by the Municipal Council of the Borough of Madison as follows:

1. Article I, "CONNECTIONS," is amended and supplemented as follows:

**A. Section 155-1. DEFINITIONS is hereby amended and supplemented to provide in its entirety as follows:**

**BIOCHEMICAL OXYGEN DEMAND ( BOD)-** The quantity of oxygen, expressed in milligrams per liter (mg/l), utilized in the biochemical oxidation of organic matter under standard laboratory procedure for five (5) days at twenty (20) degrees Celsius. The standard laboratory procedure shall be that found in the latest edition of "Standard Methods for the Examination of Water and Wastewater"; ASTM Standards, Part 23, Water; Atmospheric Analysis (1972); EPA Methods for Chemical Analysis of Water and Wastes (1971).

**Chemical oxygen demand (COD) -** Means a measure of the oxygen required to oxidize all compounds in water, both organic and inorganic (in milligrams per liter, mg/l) in a waste sample under specific conditions of an oxidizing agent, temperature and time as determined by analytical procedures set forth in the for Chemical Analysis of Water and Wastes (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

**CATEGORICAL STANDARD -** Any limitation upon the discharge of pollutants adopted by the United States Environmental Protection Agency pursuant to Section 307(b) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977.

**COMPOSITE SAMPLE -** See "Samples, Types of".

**DISCHARGE -** The action of pumping, leaching, releasing, spilling, leaking, pouring emitting, emptying, or dumping and also means the causing of permitting of any of the aforesaid.

**DISPOSAL -** The storage, treatment, utilization or processing and final disposition of septage.

**FOOD ESTABLISHMENTS –** Those establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption by the public such as restaurant, commercial, kitchen, caterer, hotel, school, hospital, prison, correctional facility, and care institution, These establishments use one or more of the following preparation activities: cooking by frying (all methods), baking (all methods), grilling, sautéing, rotisserie cooking, broiling (all methods), boiling, blanching, roasting,

toasting, or poaching. Also include are infrared heating, searing, barbecuing, and any other food preparation activity that produces a hot, non-drinkable food product in or on a receptacle that requires washing.

Governmental entity - Means a Federal, State, interstate agency, county or municipal government or school district whose jurisdiction is partially or entirely within the State.

GRAB SAMPLE - See "Samples, Types of".

HAZARDOUS POLLUTANT -

1. Any toxic pollutant;
2. Any hazardous substance as defined by the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11; or
3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; or
4. Any substance the use or manufacture of which is prohibited under the Federal Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or
5. Any substance identified as a known carcinogen by the International Agency for Research on Cancer; or

6. Any hazardous waste designated pursuant to the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. or the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

**IMMEDIATE ACCESS** - Access without delay but in no event beyond ten minutes from the time the request for access is made by authorized Madison-Chatham Joint Meeting personnel to any employee of the User.

**INDIRECT DISCHARGE** - Any discharge into Madison-Chatham Joint Meeting's domestic treatment works.

**INDUSTRIAL USER** - The term "Industrial User" means a source of discharge of industrial waste.

**INDUSTRIAL WASTES** - The liquid wastes from industrial manufacturing processes, as defined in the 1972 Edition of the "Standard Industrial Classification Manual", as distinct from sanitary sewage. Industrial wastes includes the leachate from landfills or other contaminated areas.

**INHIBITORY POLLUTANT** - Any pollutant which, when entering a domestic treatment works, in sufficient quantity will interfere with the treatment work's physical, chemical, and/or biological processes.

**INTERFERENCE** - A Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

1. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

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2. Therefore is a cause of a violation of any requirement of the POTW's NJPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

**JOINT MEETING** - The legal entity which owns or operates the Molitor Water Pollution Control Facility.

**Local limits** -Any restriction on quantities, quality, or concentrations of pollutants discharged into a local agency's treatment works, developed to prevent upset, interference, or pass-through of pollutants to the treatment works, and to protect worker health and safety, and protect/improve the quality of the sludge generated by the treatment works.

**MCJM** - Abbreviation for Madison-Chatham Joint Meeting

**MG/L** - Abbreviation for milligrams per liter.

**NATIONAL PRETREATMENT STANDARD** - "National Pretreatment Standard", "Pretreatment Standard," or "Standard" means any regulation containing pollutant discharge limits promulgated by the USEPA in accordance with section 307(b) and (c) of the Clean Water Act, which applies to Industrial Users. This term includes

prohibitive discharge limits established pursuant to 40 CFR § 403.5.

NJPDES - The New Jersey Pollutant Discharge Elimination System or "NJPDES" means the New Jersey system for the issuance of permits pursuant to the Water Pollution Control Act.

NJDEP - The New Jersey Department of Environmental Protection.

Non-contact cooling water - Water used to reduce temperature for the purpose of cooling. Such waters do not come into direct contact with any raw material, intermediate product (other than heat) or finished product. Non-contact cooling water may however contain algaecides, or biocides to control fouling of equipment such as heat exchangers, and/or corrosion inhibitors.

Oil and grease - Includes the nonpetroleum-based pollutants of animal and vegetable origin, and petroleum-based pollutants, which are analyzed by a USEPA and/or New Jersey State Certified Laboratory approved method for oil and grease referenced in 40 CFR Part 136, as amended, including subsequent amendments, and the petroleum-based pollutants analyzed by a USEPA and/or New Jersey State Certified Laboratory approved method for petroleum hydrocarbons cited in Methods for Chemical Analysis of Water and Wastes USEPA, as amended.

OIL, GREASE AND SAND INTERCEPTOR OR TRAPS – A device designed and installed so as to separate and retain deleterious hazardous or undesirable matter from sanitary waste while permitting sanitary sewerage or liquid wastes to discharge into the drainage system by gravity.

PASS THROUGH - A Discharge which exits the POTW into waters of the United States or Waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NJPDES permit (including an increase in the magnitude or duration of a violation).

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

Petroleum hydrocarbons or petroleum-based oil and grease - The petroleum-based pollutants analyzed by an EPA and/or New Jersey State Certified Laboratory approved

method for petroleum hydrocarbons cited in Methods for Chemical Analysis of Water and Wastes, USEPA, as amended.

pH - The logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of the hydrogen-ions, in grams, per liter of solution.

POLLUTION - The condition of water resulting from the introduction therein of substances of any kind and in quantities rendering it detrimental or immediately or potentially dangerous to public health, or unfit for public or commercial use.

PRETREATMENT - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40CFR § 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40CFR § 403.6(e).

PRETREATMENT REQUIREMENTS - Any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

PRETREATMENT STANDARDS - Means all applicable Federal Rules implementing Section 307 of the Clean Water Act, as well as any non-conflicting State, or local standards. In cases of conflicting standards or regulations, the more stringent thereof shall apply.

Process wastewater - Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater includes, but is not limited to, leachate and cooling water other than non-contact cooling water. This definition includes the terms commercial wastewater and industrial wastewater as used in 40CFR Part 503.

"POTW" OR Publicly owned treatment works: Any device or system used in the storage and treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State, municipality or political subdivision. This definition includes sewers, pipes, or other conveyances if they convey wastewater to a POTW providing treatment.

PUBLIC SEWER - See "Sewers, Types of".

Radioactive waste - Any waste which contains radioactive material in concentrations which exceed those listed in 10CFR Part 20, Appendix B, Table II, Column 2, or exceed the "Criteria for Identifying and Applying Characteristics of Hazardous Waste and for Listing Hazardous Waste" in 40CFR Part 261, whichever is applicable.

SAMPLES, TYPES OF -

GRAB SAMPLE - "Grab sample" means an individual sample collected over a time period of less than 15 minutes.

COMPOSITE SAMPLE - "Composite sample" means a sample composed of several discrete samples combined in a known proportion. For wastewater monitoring, a composite sample is a sample composed of several discrete samples collected at equal time intervals, or proportionally to the flow rate of the discharge.

SANITARY SEWAGE - Means any liquid waste containing animal or vegetable matter in suspension or solution, or the water carried wastes resulting from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or any other source of water carried waste of human origin or containing putrescible material. The term specifically excludes industrial, hazardous or toxic wastes and materials.

SANITARY SEWER - See "Sewers, Types of".

Septage - The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

**SEWAGE** - means any wastes, including wastes from humans, households, commercial establishments, and industries that are discharged to or otherwise enter a sewage treatment works.

**SEWER** - A pipe or conduit that carries or is intended to carry wastewater or drainage water.

**SEWER SYSTEM** - All trunks, sub-trunks, sewers, interceptors, laterals, branches, and all other sewer appurtenances, whether privately owned or owned by the Borough of Madison, Borough of Chatham or the Madison-Chatham Joint Meeting, the sewage from which is delivered to the sewage treatment plant.

**SEWERAGE SYSTEM** - Any facility or extension thereof designed to provide for the collection, treatment or discharge of sewage. Also, see "Sewers, Types of".

**SEWERAGE TREATMENT PLANT** - An arrangement of devices and structures used for treating of sewage other than that used on and for a property under one ownership as an individual sanitary disposal system.

**SEWERS, TYPES OF** - An underground pipe or drain used to carry off water and waste matter as follows:

**BRANCH SEWER** - A sewer which receives wastewater from a relatively small area and discharges into a main sewer.

**OUTFALL SEWER** - A sewer which receives wastewater from a collecting system or treatment plant and carries it to a point of final discharge.

**PUBLIC SEWER** - A sewer owned or controlled by the Joint Meeting, a public utility, or other governmental agency.

**SANITARY SEWER** - A sewer that carries water carried

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wastes from residences, commercial building, industrial plants and institutions.

#### SIGNIFICANT INDUSTRIAL USER-

1. The term Significant Industrial User means any user including, but not limited to, any significant industrial user as defined in 40CFR 403.3(t) where:

i. The User is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N;

ii. The User's average volume of process wastewater exceeds 25,000 gallons per day;

iii. The amount of BOD, COD or Suspended Solids in

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the  
industrial  
process  
wastewater  
discharge  
exceeds  
the mass  
equivalent  
of 25,000  
gallons per  
day of the  
domestic  
waste;

iv. The  
volume of  
industrial  
process  
wastewater  
in the  
discharge  
exceeds  
five  
percent or  
more of  
the  
average  
daily dry  
weather  
flow of the  
Madison-Chatham  
Joint  
Meeting;

v. The  
User's  
discharge  
of process  
wastewater  
contributes,  
five  
percent or  
more of  
the daily  
mass  
loading of  
any of the  
pollutants  
listed in

N.J.A.C.  
7:14A-4,  
Appendix  
A Tables  
II through  
V;

vi. The  
User is  
designated  
as an  
Significant  
Industrial  
User by  
NJDEP on  
the basis  
that the  
User has a  
reasonable  
potential  
for  
adversely  
affecting  
the  
Madison-Chatham  
Joint  
Meeting's  
operation;

vii. The  
User is  
designated  
as a  
Significant  
Industrial  
User by  
the  
NJDEP on  
the basis  
that the  
User has  
been in  
violation  
of any  
Federal,  
State, or  
local  
pretreatment  
standard or

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requirement,  
including,  
but not  
limited to,  
significant  
noncompliance  
as defined  
in 40 CFR  
403.8(f)(2)(vii);  
or

viii. The  
NJDEP  
determines  
it would be  
consistent  
with the  
intent of  
Federal or  
State law  
or  
regulation  
to require a  
permit for  
the User.

**SIGNIFICANT NONCOMPLIER** - "Significant Noncomplier," "Significant Noncompliance" or "SNC" means any person who commits any of the violations described below, unless the NJDEP uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the NJDEP states the specific reasons therefor, which may include the potential for harm to human health or the environment.

A. Violations which cause a person to become or remain an SNC under the state definition of significant noncomplier include:

1. A  
serious  
violation  
for the  
same  
pollutant,  
at the same

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discharge  
point  
source, in  
any two  
months of  
any  
consecutive  
six month  
period;

2.  
Exceedance  
of an  
effluent  
limitation  
expressed  
as a  
monthly  
average,  
for the  
same  
pollutant,  
at the same  
discharge  
point  
source, by  
any  
amount in  
any four  
months of  
any  
consecutive  
six month  
period;

3. If there  
is not an  
effluent  
limitation  
for a  
particular  
pollutant  
expressed  
as a  
monthly  
average,  
exceedance  
of the  
monthly

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average of  
the daily  
maximums  
for the  
effluent  
limitation,  
for the  
same  
pollutant,  
at the same  
discharge  
point  
source, by  
any  
amount in  
any four  
months of  
any  
consecutive  
six month  
period;

4. Any  
exceedance  
of an  
effluent  
limitation  
for pH by  
any  
amount,  
excluding  
the  
excursions  
specifically  
excepted  
by a permit  
issued by  
the  
NJDEP  
with  
continuous  
pH  
monitoring,  
at the same  
discharge  
point  
source in  
any four  
months of  
any  
consecutive

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six month  
period; or

5. Failure  
to submit a  
completed  
discharge  
monitoring  
report in  
any two  
months of  
any  
consecutive  
six month  
period.

B. Under the federal definition set forth at 40 CFR 403.8(f)(2)(vii), an Industrial User is in Significant Noncompliance if its violation meets one or more of the following criteria:

1. Chronic  
violations  
of  
wastewater  
discharge  
limits,  
defined  
here as  
those in  
which  
sixty-six  
percent or  
more of all  
of the  
measurements  
taken  
during a  
six-month  
period  
exceed (by  
any  
magnitude)  
the daily  
maximum

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limit or the  
average  
limit for  
the same  
pollutant  
parameter;

2.  
Technical  
Review  
Criteria  
(TRC)  
violations,  
defined  
here as  
those in  
which  
thirty-three  
percent or  
more of all  
of the  
measurements  
for each  
pollutant  
parameter  
taken  
during a  
six-month  
period  
equal or  
exceed the  
product of  
the daily  
maximum  
limit or the  
average  
limit  
multiplied  
by the  
applicable  
TRC  
(TRC=1.4  
for BOD,  
SS, fats,  
oil, and  
grease, and  
1.2 for all  
other  
pollutants  
except pH.

3. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the NJDEP determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's

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exercise of  
its  
emergency  
authority  
under 40  
CFR  
403.8(f)(1)(vi)(B)  
to halt or  
prevent  
such a  
discharge;

5. Failure  
to meet,  
within 90  
days after  
the  
schedule  
date, a  
compliance  
schedule  
milestone  
contained  
in a local  
control  
mechanism  
or  
enforcement  
order for  
starting  
construction,  
completing  
construction,  
or attaining  
final  
compliance;

6. Failure  
to provide,  
within 30  
days after  
the due  
date,  
required  
reports  
such as  
baseline  
monitoring  
reports,

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90-day  
compliance  
reports,  
periodic  
self-  
monitoring  
reports,  
and reports  
on  
compliance  
with  
compliance  
schedules;

7. Failure  
to  
accurately  
report  
noncompliance;

8. Any  
other  
violation  
or group of  
violations  
which the  
NJDEP  
determines  
will  
adversely  
affect the  
operation  
or  
implementation  
of the  
pretreatment  
program.

Sludge - The solid residue and associated liquid resulting from the physical, chemical or biological treatment of domestic or industrial wastewaters.

Slug discharge - Any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge.

**STORM DRAIN OR STORM SEWER** - A drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.

Stormwater - Water resulting from precipitation (including rain and snow) that:

1. Runs off the land's surface;
2. Is transmitted to the subsurface; or
3. Is captured by separate storm sewers or other sewerage or drainage facilities, or conveyed by snow removal equipment.

**SUSPENDED SOLIDS, (SS)** - Total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering and prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as non-filterable residue.

**SYSTEM** - All trunks, interceptors, conduits, pipe lines, mains, pumping and ventilation stations, appurtenances, treatment or disposal systems, plants and works, outfalls, and all other structures and conveyances and real and tangible personal property acquired, constructed or operated by the Madison-Chatham Joint Meeting for the purposes of the Madison-Chatham Joint Meeting.

**TREATMENT WORKS** - Any device or systems, whether publicly or privately owned or operated, used in the storage, treatment, recycling, or reclamation of domestic or industrial waste of a liquid nature including intercepting sewers, outfall sewers, sewage collection systems, cooling towers, and ponds, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment. Additionally, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, or industrial waste in the sanitary sewer systems.

**UNPOLLUTED WATER** - Water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

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USEPA - Abbreviation for the Environmental Protection Agency, an agency of the United States Government.

USER - Any individual, firm, company, partnership, corporations, association, group or society, which discharges wastewater into a treatment works.

WASTEWATER - A combination of the liquid and water carried wastes from residences, commercial buildings, industrial plants, and institutions.

WASTEWATER FACILITIES - The structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

WASTEWATER TREATMENT WORKS - An arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with "wastewater treatment plant" or "waste treatment plant" or "water pollution control plant."

**B. Any provisions of this Section, 155.1 DEFINITIONS, as amended and supplemented that are inconsistent with the provisions of this amendment and supplement are hereby repealed.**

#####

2. ARTICLE II, "DISCHARGE OF WASTES," is hereby amended and supplemented as follows:

**A. Section 155-8. ENUMERATION OF PROHIBITED DISCHARGES is hereby amended and supplemented as follows:**

**SECTION 155.8 PROHIBITED WASTES AND SEWER USE**

## A. GENERAL PROHIBITIONS

No person shall discharge, deposit, cause or allow to be deposited or discharged into the MCJM wastewater facilities and wastewater treatment works or public sewer, any substance, wastewater or pollutant which may cause pass through or interference or that will:

1. Not be susceptible to treatment or will interfere with the process or efficiency of the treatment system, or will exhibit inhibitory toxicity in the treatment system;
2. Violate State or Federal Statutes, Rules or Regulations or Pretreatment standards as the same may be promulgated from time to time;
3. Cause the MCJM facilities to violate State or Federal Statutes, Rules or Regulations or Pretreatment standards as the same may be promulgated from time to time, the MCJM NJPDES Permit, applicable receiving water standards, MCJM's permit regulating sludge which is produced during the treatment process or any other permit issued to the MCJM.

## B. SPECIFIC PROHIBITIONS

No person shall discharge, deposit, cause or allow to be deposited or discharged into the MCJM wastewater facilities, wastewater treatment works or public sewer, any substance, wastewater or pollutant which contains the following:

1. Storm waters, surface water, groundwater, roof runoff, swimming pool water, sub-surface drainage, foundation, floor drain or basement sump drainage, pond water, non-contact cooling water or unpolluted industrial wastes.
2. Any liquid containing fats, wax, grease, or oils, either

emulsified or not, in excess of 100 mg/l of solvent soluble materials or containing substances which may solidify or become viscous at temperatures between 32 and 140 degrees F. (0 degrees and 60 degrees C.).

3. The discharge of petroleum hydrocarbons in excess of 100 mg/L monthly average or 150 mg/L daily maximum as set forth at N.J.A.C. 7:14A-21.2(a) is prohibited.

4. Any residues from petroleum storage, refining or processing; waste fuels, lubricants, solvents, or paints.

5. Any wastewater containing any liquids, solids or gases which, by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to create an explosive, flammable or combustible atmosphere in any part of the MCJM wastewater facilities or wastewater treatment works, including, but not limited to wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.

6. Any solid or viscous substance in quantities or of such size capable of causing obstruction to the flow in sewers or interference with the proper operation of the MCJM wastewater facilities or wastewater treatment works, such as, but not limited to, mud, straw, metal, rags, glass, tar, plastics, wood and shavings, ashes, cinders, sand, feathers, whole blood, paunch manure, hair and fleshing, entrails, paper or plastic containers, etc.

7. Any ground or un-ground garbage, either from a commercial garbage disposal units or any other source, except residential garbage disposal systems.

8. Any pollutant, including oxygen demanding pollutants (Biochemical Oxygen Demand, Chemical Oxygen Demand, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the MCJM wastewater facilities or wastewater treatment works.

9. Heat in amounts which will inhibit biological activity in the MCJM wastewater facilities or wastewater treatment works resulting in Interference, but in no case heat in such quantities that the temperature at said wastewater facilities or wastewater treatment works exceeds 40°C (104°F) unless alternate temperature limits are approved.

10. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

11. Pollutants which result in the presence of toxic gases, vapors, or fumes within the MCJM wastewater facilities, wastewater treatment works or public sewer in a quantity that may cause acute worker health and safety problems.

12. Any waste having a pH lower than 5 or higher than 9 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the MCJM.

13. Any radioactive waste or isotope of such half-life or concentration as to be in excess of that permitted by appropriate regulatory agencies having control over their use or in such quantity as to cause damage or hazard to structures, equipment, personnel of the Borough of Madison, Borough of Chatham or MCJM, the wastewater facilities or wastewater treatment works.

14. Any waste containing phenols, noxious or malodorous solids, liquids or gases, which either singly or by interaction with other wastes, are capable of creating a public nuisance or hazard to life, or are or may be sufficient to prevent entry into a sewer for its maintenance and repair.

15. Any wastewater containing toxic pollutants or other substances which may, in sufficient quantity, cause injury, damage or hazard to personnel, structures or equipment, or

interference with the MCJM wastewater facilities, wastewater treatment works, public sewer system or any portion of the liquid or solids treatment or handling processes, or that may pass through the treatment facilities in such condition that it may not achieve State, Federal or other existing requirements for the effluent or for the receiving waters. Except as permitted under Section 155.8.2 Local Limits, the following chemicals are specifically prohibited: alcohols, aldehydes, arsenic, and arsenicals, bromine, chlorinated hydrocarbons, compounds with chlorine demands in excess of 100ppm, chromium or chromium compounds, copper and copper salts, creosol, cyanide or cyanide compounds, fluorine, iodine, mercury or mercury compounds, nickel and nickel compounds, pesticides, silver and silver compounds, sulfonamide, toxic dyes (organic or mineral), zinc and zinc compounds or other heavy metals; all strong oxidizing agents such as peroxide, chromates, dichromate, permanganates, etc., compounds producing hydrogen sulfide or any other toxic inflammable or explosive gases, either upon acidification, alkalization, reduction or oxidation; strong reducing agents such as nitrates, sulfites, sulfides; strong acids or strong alkalis, except to the extent set forth herein.

16. Any material which exerts or causes:

- a. Unusual concentrations of inert Suspended Solids (such as, but not limited to, Fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
- b. Excessive discoloration (such as, but not limited to, dye solutions and vegetable tanning solutions) which cannot be removed by the wastewater treatment works. In no case shall a discolored discharge be permitted if, in the opinion of the MCJM, said discharge is likely to interfere with the operation of the wastewater treatment system or to cause a violation of the facility's NJPDES permit, applicable water quality criteria, or sludge disposal regulations.

c. Unusual BOD, COD, or chlorine requirements in such quantities as to constitute an unacceptable load or interference on the MCJM wastewater facilities or wastewater treatment works.

d. Any unusual volume of flow or concentration of wastes constituting a "slug" of such volume or strength so as to cause a treatment process upset and subsequent loss of treatment efficiency.

17. Septage or wastes from septic tanks, cesspools or other such sources of sanitary sewage.

18. Any water added for the purpose of diluting wastes which would otherwise exceed applicable maximum concentration limits.

### **SECTION 155.8.1 CATEGORICAL STANDARDS**

No person shall discharge, deposit, cause or allow to be deposited or discharged into the wastewater facilities wastewater treatment works of the MCJM, or public sewer any waste which violates applicable categorical standards. As pretreatment standards for toxic or other industrial wastes are promulgated by the USEPA for a given category of Industrial User, all Industrial Users shall conform to the USEPA timetable for complying with applicable discharge limitations. Notwithstanding anything set forth herein, an Industrial User shall comply with all Local Limits and any more stringent standards which are established by the MCJM or other regulatory agencies. Changes and additions may be implemented as necessary from time to time by resolution of the MCJM or ordinance of the Borough. Categorical standards can be modified only through the Federal regulatory mechanisms available pursuant to 40CFR 403.7.

### **SECTION 155.8.2 LOCAL LIMITS**

{RESERVED}

**SECTION 155.8.3 COMPLIANCE DETERMINATION**

A. Compliance determinations with respect to any conformance with ordinances or permit conditions or limitations may be made on the basis of instantaneous grab samples, sequential grab samples, or composite samples. Sequential grab samples or composite samples may be taken over a 24-hour period, or any other time span, as deemed necessary by the NJDEP, to meet the requirements of a specific situation.

B. Whenever it shall be necessary for the purpose of these general sewer use requirements, authorized representatives of the MCJM, NJDEP, USEPA or other governmental authorities having jurisdiction may, upon presentation of credentials, enter upon the premises of any User as follows:

1. During business hours, on notice to authorized personnel of the User, but without the necessity of a warrant, for the purposes of inspecting, copying or photographing any records required to be kept.

2. At any time without a warrant or prior notice for the purpose of installing or inspecting any monitoring equipment or method, inspecting the process wastewater pretreatment facility, and/or measuring, sampling and/or testing any discharge of wastewater either from process wastewater pretreatment facilities or the point of discharge to the MCJM wastewater facilities or wastewater treatment works. The User shall instruct

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security personnel to provide immediate access to such representatives upon presentation of valid credentials at any hour and under any and all circumstances. The User's security personnel will be entitled to accompany the entering representatives.

3. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the MCJM and shall not be replaced. The costs of clearing such access shall be born by the User.

4. Immediate access shall be granted to authorized representatives of the MCJM, NJDEP, USEPA or other governmental authorities having jurisdiction upon presentation of valid credentials. Unreasonable delays in allowing access to the User's premises shall be a violation of this ordinance.

C. Each User shall reimburse the MCJM for the actual costs incurred by the MCJM for such monitoring, sampling, investigation, engineering evaluation, administrative costs, legal or other services which are necessary or appropriate, in addition to those services which are minimally required and which are properly allocable to the User's operation. Payment for such expenses shall be made by the User within ten (10) days after the submission of an invoice by the MCJM.

#### **SECTION 155.8.4 EMERGENCY SUSPENSIONS**

A. Upon advance notice to the Borough Administrator and the Health Officer, the Superintendent of the MCJM may

immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. Upon advance notice to the Borough Administrator and the Health Officer, the Superintendent of the MCJM may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, which presents, or may present, an endangerment to the environment, or for noncompliance with pretreatment standards and requirements.

B. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, and upon advance notice to the Borough Administrator and the Health Officer, the Superintendent may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Superintendent of the MCJM and/or the NJDEP may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Superintendent and/or the NJDEP that the period of endangerment has passed.

#### **SECTION 155.8.5 AFFIRMATIVE DEFENSES TO GENERAL PROHIBITIONS**

A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the General Prohibitions in Section 155.8, if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause Pass Through or cause Interference and that either:

A. A local limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the Pass Through or Interference; or

B. No local limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when the MCJM was regularly in compliance with its NJPDES permit, and in the case of Interference, was in

compliance with applicable sludge use or disposal requirements.

#### **SECTION 155.8.6 NOTIFICATION OF CHANGED CONDITIONS**

Each User must notify the Superintendent of the MCJM, and obtain prior written approval, at least ten (10) days in advance of any planned significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater, or result in the User meeting the definition of Significant Indirect User established at N.J.A.C. 7:14A-1.2, or of any substantial change in the volume or character of pollutants in their discharge. The MCJM reserves the right to deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the MCJM to violate its NJPDES permit.

A. The Superintendent may require the User to submit such information as may be deemed necessary to evaluate the changed condition.

For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent (20%) or greater, and the discharge of any previously unreported pollutants.

#### **SECTION 155.8.7 NOTIFICATION OF SLUG DISCHARGES**

A. An Industrial User shall immediately notify the MCJM of any incident of accidental or slug discharge. The notification shall include the location of the discharge, type of waste, concentration and volume.

B. An Industrial User shall take immediate action to contain and minimize the accidental or slug discharge so as to prevent interference with the treatment process, damage to the treatment system, and pass through to the receiving stream or contamination of the sludge.

C. Within five (5) days following accidental and or slug discharge, the Industrial User shall submit to the NJDEP and MCJM a detailed written report describing the date, time and cause of the discharge, the quantity and characteristics of the discharge and corrective action taken at the time of the discharge, and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to treatment system, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by any permit or other applicable law.

### **SECTION 155.8.8 NOTIFICATION OF SIGNIFICANT INDIRECT USER STATUS**

The MCJM shall notify the NJDEP at least annually which facilities within the sewer service area meet the definition of Significant Indirect User as set forth in N.J.A.C. 7:14A-1.2. The MCJM may use a variety of sources to identify SIUs including, but not limited to user surveys, existing MCJM files, water use and billing records, utility company records, sewer connection permits, business license records, Chamber of Commerce rosters, the local telephone directory, property tax records, industrial directories, newspapers, advertisements, world wide web, and drive-bys. Once a potential discharger has been identified, the MCJM may, if it is uncertain of the operations of that facility, send the user a questionnaire in order to better evaluate the users' potential of being classified as an SIU. Alternatively, the MCJM may conduct inspections of some or all such facilities.

### **SECTION 155.8.9 INDEMNIFICATION**

The Industrial User shall indemnify and save harmless the MCJM for any expense, loss or damage occasioned the MCJM, by reason of permit violation, the discharge of process wastewater or any prohibited substance, including, but not limited to the following:

A. Any cost incurred by the MCJM in removing, correcting, preventing or terminating any adverse effects upon the MCJM wastewater facilities or wastewater treatment works;

B. Any increase in the cost of sludge processing or disposal;

C. Any fines or penalties assessed against the MCJM for such violations of its permits;

D. The reasonable costs of any investigative inspection or monitoring survey which leads to the establishment of a violation of a NJPDES Significant Indirect User Permit and the reasonable costs of preparing and litigating any action successfully concluded against the User for such violation; and

E. Any other actual or compensatory damages to the MCJM resulting from the discharge.

**B. Any provisions of this Section 155.8 PROHIBITED WASTES as amended and supplemented that are inconsistent with this amendment and supplement are hereby repealed.**

**C. Section 155-9. REQUIRED GREASE AND OIL SEPARATORS is hereby amended in its entirety. It shall now read as follows:**

**SECTION 155.9 GREASE, OIL AND SAND INTERCEPTORS OR TRAPS**

A. Grease, oil and sand interceptors or traps shall be provided for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand and other harmful ingredients for all Food Establishments and when in the Opinion of the Plumbing Code Official or Health Officer, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Plumbing Code Official and designed in accordance with Standard PDI-G 101 entitled, "Testing and Rating Procedure for Type 1 Hydro Mechanical Grease Interceptors with Appendix of Installation and Maintenance" and shall be located as to be readily and easily accessible for cleaning and inspection.

B. Grease and oil interceptors shall be constructed of

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impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

C. Where installed, all grease, oil and sand interceptors or traps shall be maintained by the owner, at his or her expense, in continuously efficient operation at all times. The User shall be responsible for the maintenance of said interceptor(s) or traps and for the removal and disposal of the captured material and shall maintain records of the dates and means of disposal. All interceptors or traps shall be in conformance with applicable plumbing code requirements.

D. Where installed, all grease and oil interceptors or traps shall be inspected every six months by the Health Department and provisions of Section 155-9 shall be enforced by the Health Department. Failure to maintain grease interceptors or traps in a satisfactory manner will result in notification of said condition by the inspecting officer. The owner shall have five (5) days to correct routine maintenance violations, and ten (10) days to effect mechanical repairs, from the date of written notice, or shall be subject to the violations and penalties more fully set forth in § 155.10 of this article.

E. Application fees, inspection fees, and use fees for grease, oil and sand interceptors or traps shall be paid to the Borough in accordance with the applicable rate schedule.

F. This provisions of this Section 155.9 shall be graced and shall not become effective until one year after the date of enactment of the Ordinance herein.

**D. Any provisions of this Section 155.9 GREASE, OIL AND SAND INTERCEPTORS OR TRAPS as amended that are inconsistent with this amendment are hereby repealed.**

This Ordinance is deemed severable and if any part or provisions is

deemed invalid, the remainder shall continue in full force and effect.

This Ordinance, with the exception of Section 155.9, shall take effect upon passage, New Jersey Department of Environmental Protection approval and publication as provided by law.

Mr. Bowen commented that he felt strongly that the ordinance be introduced as it was presented to the Council. Mrs. Holden explained her wish to change wording with a motion.

Mrs. Holden moved that wording be changed from "may" to "shall" in Section 155-9 (D) of Ordinance 62-2007. Ms. Baillie seconded the motion. Mr. Bowen asked to amend the motion to have inspections "every six months" rather than "quarterly", for which there was general support; Mrs. Holden modified the motion to move both amendments, which Ms. Baillie seconded. At the conclusion of discussion, the amendments were adopted as follows to Ordinance 62-2007:

.....

Section 155-9 (D). Where installed, all grease and oil interceptors or traps may **shall** be inspected quarterly **every six months** by the Health Department **and the provisions of Section 155-9 shall be enforced by the Health Department**.....

The following roll call vote was recorded adopting the above amendments:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Mr. Bowen moved adoption of Ordinance 62-2007 as amended. Mrs. Vitale seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

**ORDINANCE 63-2007**

**ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING \$229,876.72 FROM THE GENERAL CAPITAL IMPROVEMENT FUND FOR INTER-BOROUGH NETWORK HARDWARE AND SOFTWARE**

**WHEREAS**, the Network Administrator has recommended that the Borough appropriate \$229,876.72 from the General Capital Improvement Fund for purchase of networking hardware for the Fire and Police Building and revision of the Borough computer network; and

**WHEREAS**, the Director of Finance has attested to the availability of the funds in the General

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Capital Improvement Fund in an amount not to exceed \$229,876.72 for this purpose; and

**WHEREAS**, the Borough Council has determined that the Borough should appropriate \$229,876.72 from the General Capital Improvement Fund for purchase of networking hardware for the Fire and Police Building and revision of the Borough computer network; and

**WHEREAS**, Ordinance 36-2005 appropriated \$105,777.00 from the General Capital Improvement Fund for server upgrades which were not previously implemented and therefore a subsequent Resolution will be adopted canceling Ordinance 36-2005; and

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

**SECTION 1:** The amount of \$229,876.72 is hereby appropriated from the General Capital Improvement Fund for purchase of networking hardware for the Fire and Police Building and revision of the Borough computer network.

**SECTION 2:** The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

**SECTION 3:** This Ordinance shall take effect as provided by law.

Mrs. Holden moved that Ordinance 63-2007, which the Clerk read by title, be adopted. Mrs. Vitale seconded the motion. This inter-Borough network hardware and software investment has been planned for many years. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

**ORDINANCE NO. 64-2007**

Hearing Wednesday, October 10, 2007

**ORDINANCE OF THE BOROUGH OF MADISON GRANTING MUNICIPAL  
CONSENT FOR THE OPERATION OF A CABLE TELEVISION SYSTEM  
WITHIN THE BOROUGH OF MADISON, NEW JERSEY TO CSC TKR, INC.**

**BOROUGH OF MADISON**

**ORDINANCE NO. 64-2007**

**ORDINANCE OF THE BOROUGH OF MADISON GRANTING MUNICIPAL CONSENT FOR THE  
OPERATION OF A CABLE TELEVISION SYSTEM WITHIN THE BOROUGH OF MADISON, NEW**

**JERSEY TO CSC TKR, INC.**

**WHEREAS**, the governing body of the Borough of Madison (hereinafter referred to as the "Borough") determined that CSC TKR, Inc. (hereinafter referred to as "the Company" or "Cablevision") had the technical competence and general fitness to operate a cable television system in the Borough, and by prior ordinance granted its municipal consent for Cablevision to obtain a non-exclusive franchise for the placement of facilities and the establishment of a cable television system in the Borough; and

**WHEREAS**, by application for renewal consent filed with the Borough and the Office of Cable Television on or about April 9, 2007, Cablevision has sought a renewal of the franchise; and

**WHEREAS**, the Borough having held public hearings has made due inquiry to review Cablevision's performance under the Franchise, and to identify the Borough's future cable-related needs and interests and has concluded that Cablevision has substantially complied with its obligations under the Franchise and has committed to certain undertakings responsive to the Borough's future cable-related needs and interests; and

**WHEREAS**, the governing body of the Borough has accordingly concluded that the consent should be renewed subject to the requirements set forth below; and that, provided Cablevision's proposal for renewal embodies the commitments set forth below, the Borough's municipal consent to the renewal of the Franchise should be given; and

**WHEREAS**, imposition of the same burdens and costs on other franchised competitors by the Borough is a basic assumption of the parties;

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Madison, County of Morris, and State of New Jersey, as follows:

***SECTION 1. DEFINITIONS***

For the purpose of this Ordinance the terms defined above shall have the meanings there indicated, and the following additional terms shall have the following meanings:

"Act" or "Cable Television Act" shall mean that statute of the State of New Jersey relating to cable television, known as the Cable Television Act, N.J.S.A. 48:5A-1 et seq.

"Application" shall mean Cablevision's application for Renewal of Municipal Consent, which application is on file in the Borough's office and is incorporated herein by reference and made a part hereof, except as modified, changed, limited or altered by this Ordinance.

"Board" shall mean the Board of Public Utilities of the State of New Jersey or its successor agency.

"Borough" shall mean the governing body of the Borough of Madison in the County of Morris and the State of New Jersey.

"Company" shall mean CSC TKR, Inc. ("Cablevision"), the grantee of rights under this Ordinance.

"FCC" shall mean the Federal Communications Commission.

"Federal Act" shall mean that federal statute relating to cable communications commonly known as the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 *et seq.* and the Telecommunications Act of 1996, or as those statutes may be amended.

"Federal Regulations" shall mean those federal regulations relating to cable television services, 47 C.F.R. Section 76.1 *et seq.* (and, to the extent applicable, any other federal rules and regulations relating to cable television, including but not limited to, those described in 47 C.F.R. Section 76.3), or as such regulations may be amended.

"Standard installation" shall mean the installation of drop cable to a customer's premises where the distance from the point of entry into the building being served is less than 150 feet from the active cable television system plant.

"State" shall mean the State of New Jersey.

"State Regulations" shall mean those regulations of the State of New Jersey Board of Public Utilities relating to cable television. N.J.A.C. 14:17-1.1 *et seq.* and N.J.A.C. 14:18-1 *et seq.* or as such regulations may be amended.

## **SECTION 2. STATEMENT OF FINDINGS**

A public hearing concerning the consent herein granted to Cablevision was held after proper public notice pursuant to the terms and conditions of the Act. Said hearing having been held and fully open to the public, and the municipality having received all comments regarding the qualifications of Cablevision to receive this consent, the Borough hereby finds Cablevision possesses the necessary legal, technical, character, financial and other qualifications to support municipal consent, and that Cablevision's operating and construction arrangements are adequate and feasible.

## ***SECTION 3. GRANT OF AUTHORITY***

The Borough hereby grants to Cablevision its non-exclusive consent to place in, upon, along, across, above, over, and under its highways, streets, alleys, sidewalks, public ways, and public places in the municipality poles, wires, cables, and fixtures necessary for the maintenance and operation in the Borough of a cable television system, and for the provision of any communication service over such

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system as may be authorized by federal or State regulatory agencies. Operation and construction, pursuant to said consent, is conditioned upon prior approval of the Board of Public Utilities.

#### ***SECTION 4. DURATION OF FRANCHISE***

This consent granted herein shall be non-exclusive and shall be for a term of ten (10) years from the date of issuance of a Certificate of Approval by the Board.

#### ***SECTION 5. EXPIRATION AND SUBSEQUENT RENEWAL***

If Cablevision seeks successive consent, it shall, prior to the expiration of this consent, apply for a municipal consent and certificate of approval in accordance with N.J.S.A 48:5A-11 and N.J.S.A. 48:5A-16, and applicable state and federal rules and regulations. The Company shall also seek approval from the Board authorizing continued operation during the period following expiration of the consent granted herein, and until such a time that a decision is made by the Borough and the Board relative to the renewal of said consent.

#### ***SECTION 6. FRANCHISE TERRITORY***

The consent granted under this Ordinance to Cablevision shall apply to the entirety of the Borough and any property hereafter annexed.

#### ***SECTION 7. PRIMARY SERVICE AREA***

Cablevision shall be required to proffer service along any public right-of-way to any person's residence located in the portion of the franchise territory, as described in the map attached to the Application at tariffed rates for standard and nonstandard installation. Such area designated shall constitute the primary service area.

#### ***SECTION 8. FRANCHISE FEE***

Cablevision shall pay to the Borough, an annual franchise fee, in accordance with N.J.S.A 48:5A-30.

#### ***SECTION 9. FREE SERVICE***

Upon enactment of this ordinance by the Borough and issuance of a Certificate of Approval by the Board, the Company shall provide, upon request and within ninety (90) days, free of charge, one (1) standard installation and monthly basic cable television service to all State or locally accredited public, private and parochial schools and all municipal buildings used for governmental purposes within the Borough. A preliminary schedule of said properties is attached hereto as Exhibit A.

Upon enactment of this ordinance by the Borough and issuance of a Certificate of Approval by the

Board, the Company shall provide to one municipal location used for governmental purposes, without charge, the following within ninety (90) days: (1) one standard installation; (2) one cable modem per installation; and (3) basic cable modem service for the term of this Ordinance. The Borough shall be permitted to network, at its own cost, four personal computers terminals to the cable modem provided by the Cablevision. This offer shall be subject to the reasonable terms, conditions and use policies of the Company as those policies may exist from time to time.

Upon enactment of this ordinance by the Borough and issuance of a Certificate of Approval by the Board, the Company shall provide, upon request and within ninety (90) days, to state and locally accredited public and private and parochial elementary and secondary schools and municipal public libraries in the Borough, without charge, the following: (1) one standard installation per school and library; (2) one cable modem per installation; and, (3) basic cable modem service for the term of this Ordinance for each installation. Each school and library shall be permitted, at its own cost, to network up to 25 computers to the cable modem provided by Cablevision. This offer shall be subject to the reasonable terms, conditions and use policies of the Company, as those policies may exist from time to time."

### **SECTION 10. CONSTRUCTION/SYSTEM REQUIREMENTS**

Cablevision shall perform construction and installation of its plant and facilities in accordance with applicable State and federal law. The Company shall be subject to the following additional construction requirements with respect to the installation of its plant and facilities in the Borough:

- (a) In the event that the Company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways or other surfaces, the Company shall at its sole expense restore and replace such disturbances in as good a condition as existed prior to the commencement of said work.
- (b) If at any time during the period of this consent, the municipality shall alter or change the grade of any street, alley or other way or place, the Company, upon reasonable notice by the Borough shall remove or relocate its equipment, at its own expense.
- (c) Upon request of a person holding a building or moving permit issued by the Borough, the Company shall temporarily move or remove appropriate parts of its facilities so as to permit the moving or erection of buildings or for the performance of other work. The expense of any such temporary removal or relocation shall be paid in advance to the Company by the person requesting the same. In such cases, the Company shall be given not less than fourteen (14) days prior written notice in order to arrange for the changes required.
- (d) During the exercise of its rights and privileges under this consent, the Company shall have the authority to trim public trees upon and overhanging streets, alleys, sidewalks and public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires, cables, conduits and fixtures of the Company. Such trimming shall be only to the extent necessary to maintain proper clearance for the Company's facilities, and shall be coordinated and approved by the Borough of Madison Shade Tree Management Board.

### **SECTION 11. TECHNICAL AND CUSTOMER SERVICE STANDARDS**

Cablevision shall comply with the technical and customer service standards established for the cable

industry under applicable federal and State laws, rules and regulations.

**SECTION 12. LOCAL OFFICE OR AGENT**

**Cablevision shall establish and maintain during the entire term of this consent a local area business office or agent for the purpose of receiving, investigating and resolving complaints regarding the quality of service, equipment malfunctions and similar matters. Said office shall be open daily during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, with the exception of holidays.**

**SECTION 13. DESIGNATION OF COMPLAINT OFFICER**

The Office of Cable Television is hereby designated as the complaint officer for the Borough pursuant to the provisions of N.J.S.A. 48:5A-26. All complaints shall be reviewed and processed in accordance with N.J.A.C. 14:17-6.5.

**SECTION 14. LIABILITY INSURANCE**

Cablevision agrees to maintain and keep in force and effect at its sole cost at all times during the term of this consent, sufficient liability insurance naming the Borough as an additional insured and insuring against loss by any such claim, suit, judgment, execution or demand in the minimum amounts of five-hundred thousand dollars (\$500,000) for bodily injury or death to one person, and one million dollars (\$1,000,000) for bodily injury or death resulting from any one accident or occurrence stemming from or arising out of the Company's exercise of its rights hereunder. Cablevision shall provide to the Borough at the commencement of this consent evidence of such insurance, which evidence shall, upon the request of the Borough, also be provided on an annual basis during the term hereof.

**SECTION 15. PERFORMANCE BOND**

Cablevision shall obtain and maintain, at its sole cost and expense, during the entire term of this Ordinance, a bond to the municipality in the amount of twenty-five thousand dollars (\$25,000.00). Such bond shall be to insure the faithful performance of its obligations as provided in this Franchise. The bond shall be filed with the Borough Clerk of the Borough.

**SECTION 16. RATES**

A. The rates of the Company for cable television service shall be subject to regulation to the extent permitted by federal and State law.

B. Cablevision shall implement a senior citizen discount in the amount of ten percent (10%) off the monthly broadcast basic level of cable television service rate to any person sixty-two (62) years of age or older, who subscribes to cable television services provided by the Company, subject to the

following:

Such discount shall only be available to eligible senior citizens who do not share the subscription with more than one person in the same household who is less than sixty-two (62) years of age; and,

Subscribers seeking eligibility for the discount must meet the income and residence requirements of the Pharmaceutical Assistance to Aged and Disabled (PAAD) program in the State pursuant to N.J.S.A. 30:4D-21;

The senior citizen discount herein relates only to the entry level basic rate of cable television service, and shall not apply to any additional service, feature, or equipment offered by the Company, including premium channel services and pay-per-view services.

Senior citizens, who subscribe to a level of cable television service beyond expanded basic service, including any premium or per channel a la carte service, shall not be eligible for the discount.

C. In the event that Cablevision shall be required to increase the franchise fee in accordance with N.J.S.A. 48-5A-30(d), then at such time as the new fee is instituted, Cablevision shall no longer be obligated to maintain or offer the senior discount specified in Section 17(B) above.

## **SECTION 17. EMERGENCY USES**

Cablevision shall be required to have the capability to override the audio portion of the system in order to permit the broadcasting of emergency messages by the Borough pursuant to state and federal requirements. The Company shall in no way be held liable for any injury suffered by the Borough or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television system as contemplated herein. The Borough shall utilize the

state-approved procedures for such emergency uses.

***SECTION 18. EQUITABLE TERMS***

In the event that the Borough approves or permits a cable system to operate in the community on terms more favorable or less burdensome than those contained in this Ordinance, such more favorable or less burdensome terms shall be applicable in this consent, subject to a petition to the Board of Public Utilities as provided for in accordance with N.J.S.A. 48:5A-47 and N.J.A.C. 14:17-6.7.

In the event that a non-franchised multi-channel video programmer provides service to residents of the Borough, Cablevision shall have a right to request franchise amendments to this Ordinance that relieve Cablevision of regulatory burdens that create a competitive disadvantage to the Company. In requesting amendments, Cablevision shall file with the Board of Public Utilities a petition for approval in accordance with N.J.S.A. 48:5A-47 and N.J.A.C. 14:17-6.7 seeking to amend the Ordinance. Such petition shall: i) indicate the presence of a non-franchised competitor(s); ii) identify the basis for Cablevision's belief that certain provisions of this franchise place it at a competitive disadvantage; and iii) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Borough shall not unreasonably withhold or object to granting the Company's petition.

In any subsequent municipal consent, the Borough shall require, at a minimum, the same terms and conditions of any other provider of multi-channel video programming subject to the Borough's regulatory authority as those contained in the instant consent. In the event such subsequent consent does not contain the same terms and conditions as the instant consent, the Borough agrees to support the Company's petition to the Board for modification of the consent in accordance with NJSA 48:5A-47 and NJAC 14:17-6.7 to relieve the Company of competitive disadvantages identified in the Company's petition.

***SECTION 19. REMOVAL OF FACILITIES***

Upon expiration, termination or revocation of this Ordinance, Cablevision at its sole cost and expense and upon direction of the Board, shall remove the cables and appurtenant devices constructed or maintained in connection with the services authorized herein, unless Cablevision, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate an open video system or any other federal or state certification to provide telecommunications.

***SECTION 20. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS***

Cablevision shall continue to make available non-commercial public, educational and governmental

(PEG) access as described in the Application for municipal consent.

The Borough agrees that the Company shall retain the right to use the PEG access channel, or portion thereof, for non-PEG access programming, during times when the Borough is not utilizing the channel for purposes of providing PEG access programming. In the event that the Company uses said PEG access channel for the presentation of such other programming, the PEG programming shall remain the priority use and the Company's rights with respect to using the channel for non-PEG programming shall be subordinate to the Borough provision of PEG access programming on such channel.

Within ninety (90) days from the effective date of this franchise, Cablevision shall provide and maintain one access return line at Madison Public Library located at 39 Keep Street in Madison, NJ for the production of non-commercial educational and governmental access programming on the cable system. Upon request of the Borough, Cablevision shall provide access training at least once every year.

In consideration for the rights granted by this Ordinance, Cablevision shall provide the Borough with an initial one-time grant of ten thousand dollars (\$10,000.00) (the "Initial Grant"). Such amount shall be paid within sixty (60) days following the grant of the Certificate from the Board. The Grant may be used by the Borough for any cable and/or other telecommunications related purpose as the Borough, in its discretion, may deem appropriate. Beginning in year two of the franchise (measured by the Certificate of Approval) and annually thereafter through year ten of the franchise, Cablevision shall provide the Borough with an annual amount of one thousand five hundred dollars (\$1,500.00) (the "Annual Grant"). Cablevision shall not be obligated to make any additional payments beyond year ten of the franchise. The Annual Grant shall be payable to the Borough within sixty (60) days from receipt of the Borough's written request. Notwithstanding the foregoing, should Cablevision apply for a system-wide certification or otherwise convert its municipal consent to a system-wide certification in accordance with applicable law, it shall be relieved of any payments due and owing after the date of such conversion or award of a system-wide franchise, with the exception of the Initial Grant.

## ***SECTION 21. INCORPORATION OF APPLICATION***

All of the commitments contained in the Application and any amendment thereto submitted in writing to the Borough by the Company except as modified herein, are binding upon Cablevision as terms and conditions of this consent. The Application and any other written amendments thereto submitted by Cablevision in connection with this consent are incorporated in this Ordinance by reference and made a part hereof, except as specifically modified, changed, limited, or altered by this Ordinance, or to the extent that they conflict with State or federal law.

## ***SECTION 22. CONSISTENCY WITH APPLICABLE LAWS***

This consent shall be construed in a manner consistent with all applicable federal, State and local laws.

## ***SECTION 23. SEPARABILITY***

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a

September 10, 2007

separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

**SECTION 24. EFFECTIVE DATE**

This Ordinance shall take effect upon issuance of a Certificate of Approval as issued by the Board of Public Utilities.

**SECTION 25. WRITTEN REQUEST**

The execution hereof by the Mayor of Madison shall fulfill the requirement to provide written notice as specified throughout the Agreement.

**BE IT FURTHER ORDAINED** that this Ordinance shall take effect upon the passage, and publication as required by law.

ADOPTED  
AND  
APPROVED  
October  
10,  
2007

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ELLWOOD R. KERKESLAGER , Mayor

Attest:

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MARILYN SCHAEFER, Borough Clerk

Introduced and passed: September 10, 2007

Published, Madison Eagle: September 13, 2007

Hearing and final adoption: October 10, 2007

Published, Madison Eagle: October 18, 2007

Schedule A: Preliminary List of Properties per Section 10

Hartley Dodge Memorial Building  
Madison Fire and Police Building  
Madison Public Works Building  
Madison Free Public Library Building  
Madison Civic Center, 28 Walnut Street  
Madison Housing Authority  
Madison High School  
Madison Junior High School  
Kings Road School  
Torey J. Sabatini School  
Central Avenue School  
Green Village Road School  
Bayley Ellard School  
Museum of Early Trades and Crafts  
Madison Public Schools Administrative Building  
St. Vincent Martyr School  
22 Central Avenue

Mr. Bowen moved that Ordinance 64-2007, which the Clerk read by title, be adopted. Mrs. Holden seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

**ORDINANCE 65-2007**

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING SECTION**

September 10, 2007

**75-14(2) OF THE BOROUGH CODE TO INCREASE PLUMBING  
SUBCODE FEE TO BE EQUAL TO STATE FEES**

**WHEREAS**, the Construction Official has recommended that the Borough Code be amended to reflect the same fees for the plumbing subcode as adopted by the State of New Jersey Fee Schedule; and

**WHEREAS**, the Borough Council has determined to amend the fees in accordance with said recommendation.

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the Borough of Madison, in the County of Morris and State of New Jersey as follows:

**SECTION 1:** Section 75-14 of the Borough Code entitled "Fees" subparagraph A.(2) shall be amended to state "The plumbing subcode fee shall be 100% of state fees, provided that the minimum fee shall be \$46.00."

**SECTION 2:** This ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 65-2007, which the Clerk read by title, be adopted. MsBaillie seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms.Baillie , Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

**ORDINANCE 66-2007**

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING  
ORDINANCE 26-2007 TO APPROPRIATE AN ADDITIONAL \$24,000.00  
FROM THE GENERAL CAPITAL IMPROVEMENT FUND FOR A TOTAL  
APPROPRIATION OF \$142,000.00 FOR ASSESSMENT OF HVAC,  
BATHROOM REPAIRS, NEW BOOK STACK, INTERIOR SIGNAGE,  
REUPHOLSTERING CHAIRS, AND DRAINAGE DITCH STABILIZATION  
DESIGN WORK AT THE MADISON PUBLIC LIBRARY**

**WHEREAS**, Ordinance 26-2007 of the Borough of Madison appropriated \$118,000.00 from the General Capital Improvement Fund for assessment of HVAC (\$8,500.00), bathroom repairs (\$10,000.00), new book stack (\$6,000.00), interior signage (\$3,000.00), reupholstering chairs (\$4,000.00), drainage ditch stabilization design work (\$51,500.00), and parking lot realignment at the Madison Public Library (\$35,000.00); and

**WHEREAS**, the Library Director has recommended that the Borough amend Ordinance 26-2007 to appropriate an additional \$24,000.00 from the General Capital Improvement Fund for the drainage ditch stabilization design work, thereby increasing Ordinance 26-2007 to \$142,000.00; and

September 10, 2007

**WHEREAS**, the Director of Finance has attested to the availability of the funds in the General Capital Improvement Fund in an amount not to exceed \$24,000.00 for this purpose; and

**WHEREAS**, the Borough Council has determined that the Borough should amend Ordinance 26-2007 to appropriate an additional \$24,000.00 from the General Capital Improvement Fund for the drainage ditch stabilization design work, thereby increasing Ordinance 26-2007 to \$142,000.00.

**WHEREAS**, the Library Director has recommended that the Borough transfer the \$35,000.00 previously earmarked for parking lot realignment at the Madison Free Public Library to be utilized for the drainage ditch stabilization work, which transfer is reflected in the total drainage ditch stabilization design work appropriation of \$110,500.00.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

**SECTION 1:** Ordinance 26-2007 is amended to appropriate an additional \$24,000.00 from the General Capital Improvement Fund thereby increasing Ordinance 26-2007 to \$142,000.00 for assessment of HVAC (\$8,500.00), bathroom repairs (\$10,000.00), new book stack (\$6,000.00), interior signage (\$3,000.00), reupholstering chairs (\$4,000.00), and drainage ditch stabilization design work (\$110,500.00) at the Madison Public Library.

**SECTION 2:** The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

**SECTION 3:** This Ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 66-2007, which the Clerk read by title, be adopted. Mr. Elias seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

## **ORDINANCE 67-2007**

### **ORDINANCE OF THE BOROUGH OF MADISON AMENDING ORDINANCE 7-2007 TO INCREASE APPROPRIATION FROM \$30,000.00 TO \$50,000.00 FOR PURCHASE OF ENCLOSED GENERATOR FOR THE NORTH STREET SEWER PUMP STATION**

**WHEREAS**, Ordinance 7-2007 of the Borough of Madison appropriated \$30,000.00 from the General Capital Improvement Fund to build a generator building at the North Street pump station; and

**WHEREAS**, the Superintendent of Public Works has recommended that the Borough amend Ordinance 7-2007 to appropriate an additional \$20,000.00 from the General Capital Improvement Fund thereby increasing Ordinance 7-2007 to \$50,000.00 to purchase a new generator with an enclosure attached; and

**WHEREAS**, the Director of Finance has attested to the availability of the funds in the General Capital Improvement Fund in an amount not to exceed \$20,000.00 for this purpose; and

**WHEREAS**, the Borough Council has determined that the Borough should amend Ordinance 7-2007 to appropriate an additional \$20,000.00 from the General Capital Improvement Fund thereby increasing Ordinance 7-2007 to \$50,000.00 to purchase a new generator with an enclosure attached.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

**SECTION 1:** Ordinance 7-2007 is amended to appropriate an additional \$20,000.00 from the General Capital Improvement Fund thereby increasing Ordinance 7-2007 to \$50,000.00 to purchase a new generator with an enclosure attached.

**SECTION 2:** The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

**SECTION 3:** This Ordinance shall take effect as provided by law.

Mrs. Vitale moved that Ordinance 67-2007, which the Clerk read by title, be adopted. Mrs. Holden seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

### **ORDINANCE 68-2007**

#### **ORDINANCE OF THE BOROUGH OF MADISON APPROPRIATING \$6,000.00 FROM THE FIRE DEPARTMENT TRUST ACCOUNT FOR PAGERS**

**WHEREAS**, the Fire Chief has recommended that the Borough appropriate \$6,000.00 from the Fire Department Trust Fund to replace pagers for the members in the volunteer division of the Fire Department; and

**WHEREAS**, the Director of Finance has attested to the availability of the funds in the Fire Department Trust Fund in an amount not to exceed \$6,000.00 for this purpose; and

**WHEREAS**, the Borough Council has determined that the Borough should appropriate \$6,000.00 from the Fire Department Trust Fund to replace pagers for the members in the volunteer division of the Fire Department; and

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

**SECTION 1:** The amount of \$6,000.00 is hereby appropriated from the Fire Department Trust Fund

to replace pagers for the members in the volunteer division of the Fire Department.

**SECTION 2:** The budget of the Borough is hereby amended to conform with the provisions of this Ordinance.

**SECTION 3:** This Ordinance shall take effect as provided by law.

Mr. Conley moved that Ordinance 68-2007, which the Clerk read by title, be adopted. Mrs. Holden seconded the motion. There was no Council discussion and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie, Mr. Bowen  
Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

***Consent Agenda Resolutions***

The Clerk made the following statement

Consent Agenda Resolutions will be enacted with a single motion; any Resolution requiring expenditure is supported by a Certification of Availability of Funds; any Resolution requiring discussion will be removed from the Consent Agenda; all Resolutions will be reflected in full in the minutes. The Clerk noted that R 213-2007 was removed from the Consent Agenda.

Mr. Elias moved adoption of the Consent Agenda consisting of Resolutions R 211-2007, R 212-2007, and R 214-2007 through and including R 216-2007. Mrs. Vitale seconded the motion. There was no Council discussion, and the motion passed with the following roll call vote recorded:

Yeas: Mrs. Holden, Ms. Baillie

Mr. Bowen, as to R 211-2007, R 212-2007, R 214-2006 and R 215-2007

Mrs. Vitale, Mr. Elias, Mr. Conley

Nays: None

Abstain: Mr. Bowen, as to R 216-2007

(Note R 210-2007 adopted at special meeting of 9/04/2007)

**R 211-2007**

**RESOLUTION OF THE MADISON BOROUGH COUNCIL AWARDING  
CONTRACT FOR PURCHASE OF A NEW, UNUSED DIESEL  
ARTICULATING TRACTOR WITH ATTACHMENTS TO WILFRED  
MACDONALD, INC. OF SOUTH HACKENSACK IN THE AMOUNT OF  
\$22,590.00**

**WHEREAS**, the Borough of Madison publicly advertised for bids for the purchase of a new, unused diesel articulating tractor with attachments (the "Contract") in accordance with the Local Public

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Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

**WHEREAS**, the lowest qualified bid was submitted by Wilfred MacDonald, Inc. of South Hackensack, New Jersey in the amount of \$22,950.00, less a trade-in of the old tractor for \$1,000.00, for a net cost of \$21,950.00; and

**WHEREAS**, the Superintendent of Public Works has recommended that the Borough Council award the contract to Wilfred MacDonald, Inc. in the amount of \$22,950.00, less a trade-in of the old tractor for \$1,000.00, for a net cost of \$21,950.00; and

**WHEREAS**, the Director of Finance has attested that funds will be available in an amount not to exceed \$21,950.00 for this purpose which funds were appropriated by Ordinance 8-2007.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

1. The contract for the purchase of a new, unused diesel articulating tractor with attachments is hereby awarded to Wilfred MacDonald, Inc. of South Hackensack, New Jersey based upon its bid in the amount of \$22,950.00, less a trade-in of the old tractor for \$1,000.00, for a net cost of \$21,950.00.
2. The Mayor and Borough Clerk are hereby authorized and directed on behalf of the Borough to enter into the contract with Wilfred MacDonald, Inc. in a form acceptable to the Borough Attorney.

#### **R 212-2007**

#### **RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING DRAINAGE AGREEMENT WITH TOWNSHIP OF CHATHAM**

**WHEREAS**, the Borough Engineer has recommended that the Borough of Madison enter into an interlocal agreement for stormwater pipe connection with the Township of Chatham to alleviate erosion and flooding issues from certain places in Madison, including Drew Place and Rachael Avenue; and

**WHEREAS**, the proposed agreement would allow Madison to connect to the municipal stormwater system of Chatham Township through a connection in the Valley Estates of Chatham Township.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the Borough of Madison in the County of Morris and State of New Jersey that the Mayor and Borough Clerk are authorized to execute an agreement entitled "Interlocal Agreement for Stormwater Pipe Connection" with Chatham Township for the purposes set forth herein in a form acceptable to and approved by the Borough Attorney.

*R 213-2007* was removed from the Agenda and the # retired.

#### **R 214-2007**

#### **RESOLUTION OF THE BOROUGH OF MADISON APPOINTING LYNN COPPOLA TO THE POSITION OF OFFICE ASSISTANT I, PART-TIME**

**WHEREAS**, the Construction Code Official recommends the appointment of Lynn Coppola to the position of Office Assistant I, Part Time, effective September 11, 2007; and

September 10, 2007

**WHEREAS**, the Council agrees with this recommendation.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Borough of Madison in the County of Morris and State of New Jersey, that Lynn Coppola is hereby appointed to the position of Office Assistant I, Part Time, effective September 11, 2007; and

**BE IT FURTHER RESOLVED**, that Lynn Coppola be compensated at the hourly rate of \$18.00 per hour for twenty-nine (29) hours per week (with a minimum of 25 hours per week).

### R 215-2007

#### **RESOLUTION OF THE BOROUGH OF MADISON AUTHORIZING PROFESSIONAL SERVICES CONTRACT WITH BORBAS SURVEYING & MAPPING, LLC TO PERFORM A SURVEY OF PROPERTY AT LOT 5, BLOCK 1401 ON THE TAX MAP OF FLORHAM PARK**

**WHEREAS**, the Borough Administrator has recommended the Borough retain the services of  Green Acres certified land surveyor to prepare an updated boundary/title survey of property located at Block 1401, Lot 5 on the tax map of Florham Park, known as the Rock-Florham property, prepare a three lot subdivision and prepare a Green Acres survey of the three newly created lots (hereinafter the "Contract"); and

**WHEREAS**, said services are for professional services for which a contract may be awarded without the need of competitive bidding pursuant to N.J.S.A. 40A:11-5; and

**WHEREAS**, the Borough Administrator has recommended that the Borough Council award the contract to Borbas Surveying & Mapping, LLC, in an amount not to exceed \$16,075.00 based upon its proposal dated August 17, 2007; and

**WHEREAS**, the Director of Finance has attested that funds will be available in an amount not to exceed \$16,075.00 for this purpose from the Open Space Trust Fund.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Borough of Madison in the County of Morris and State of New Jersey as follows:

1. The Mayor and Borough Clerk are hereby authorized to execute on behalf of the Borough a professional services contract with Borbas Surveying & Mapping, LLC, for professional land surveying services, to prepare an updated boundary/title survey of property located at Block 1401, Lot 5 on the tax map of Florham Park, known as the Rock-Florham property, prepare a three lot subdivision and prepare a Green Acres survey of the three newly created lots in an amount not to exceed the sum of \$16,075.00, based upon its proposal dated August 17, 2007, which contract shall be in a form acceptable to the Borough Attorney.

2. The Borough Clerk is hereby directed to publish notice of adoption of this resolution in the official newspaper of the Borough of Madison within ten (10) days of its adoption pursuant to N.J.S.A. 40A:11-5.

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**R 216-2007**

**RESOLUTION OF THE BOROUGH OF MADISON IN SUPPORT OF  
MADISON AFFORDABLE HOUSING CORPORATION'S APPLICATION  
FOR A GRANT FROM THE NEW JERSEY DEPARTMENT OF  
COMMUNITY AFFAIRS, NEIGHBORHOOD PRESERVATION BALANCED  
HOUSING PROGRAM**

**WHEREAS**, the Madison Affordable Housing Corporation desires to apply for and obtain a grant from the New Jersey Department of Community Affairs, Neighborhood Preservation Balanced Housing Program for an amount not to exceed the maximum amount allowed in accordance with N.J.A.C. 5:43-1 and FF for the purpose of developing affordable housing at 22 Central Avenue in the Borough of Madison.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the Borough of Madison in the County of Morris and State of New Jersey that the Borough of Madison does hereby support this application for such funds to the New Jersey Department of Community Affairs, Neighborhood Preservation Balanced Housing Program and acknowledge that they are an eligible municipality in accordance with N.J.A.C. 5:43-1.3(b)(cc)(d). The municipality also asks that a waiver of N.J.A.C. 5:43-1.3(a), as permitted under N.J.A.C. 5:43-1.6, be granted to allow the Madison Affordable Housing Corporation the Sponsor, as permitted under N.J.A.C. 5:43-3.1 (a)(1), to contract only for this purpose, directly with the Department of Community Affairs.

**Unfinished Business** – The Council wished Mayor Kerkeslager a "Happy Birthday".

**APPROVAL OF VOUCHERS** - None

**New Business** - None

**Adjourn and reconvene executive session**

The meeting adjourned at 10:45 p.m. and the Executive Session immediately reconvened in the Committee Room.

**RECONVENE AND ADJOURN**

The Regular Meeting reconvened at 11:15 p.m. in the Committee Room and immediately adjourned.

Respectfully submitted,

Marilyn Schaefer

Borough Clerk

Approved September 24, 2007 (MS)