ORDINANCE NO. 2024-34

AN ORDINANCE OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 74 OF THE TOWNSHIP CODE ENTITLED "WATER AND SEWER UTILITY" AND CREATING ARTICLE X ENTITLED "MANDATORY REPLACEMENT OF LEAD SERVICE LINES"

WHEREAS, Barnegat Township Water & Sewer Department, owned and operated by Barnegat Township, County of Ocean, State of New Jersey provides drinking water to approximately 24,900 customers with approximately 9030 metered accounts in the municipalities of the Township of Barnegat; and

WHEREAS, the United States Environmental Protection Agency (the "USEPA") adopted regulations to control lead and copper in drinking water and, in 1986, Congress passed the Safe Drinking Water Act Amendments, banning the use of lead solder on pipes in the construction of new homes, and

WHEREAS, P.L. 2021, Ch. 183, enacted by the New Jersey Legislature on July 22, 2021, and codified at N.J.S.A. 58:12A-40 et al., requires all community water systems to replace their inventory of lead services lines (both the private side and the Township side) within 10 years of the effective date of the legislation at a rate of 10% per annum; and

WHEREAS, all lead-containing or galvanized service lines within the Township of Barnegat distribution service area must be replaced by the year 2031; and

WHEREAS, all distribution service lines, including lead service lines, connect to Barnegat Township water distribution system and the owner of the property owns the service line starting from the curb stop and entering the home, building or structure, and

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WHEREAS, Township of Barnegat will be unable to complete its lead service line replacement program without access to the privately owned property where lead service lines are located, and

WHEREAS, the replacement of all service lines containing lead is necessary to immediately and effectively reduce the exposure of the public to the hazards of lead through drinking water: and

WHEREAS, on January 9, 2020, Governor Phil Murphy signed into law P.L. 2019, Ch. 291 (codified at N.J.S.A. 58:12A-38 et al), which finds and declares that lead in drinking water poses a serious health and safety risk to the public, particularly to infants and children; and

WHEREAS, P.L. 2019, Ch. 291, states that New Jersey municipalities may enact ordinances to allow water personnel to enter private properties to perform lead service line replacements as part of their powers to protect the health, safety and welfare of residents pursuant to N.J.S.A. 40:48-2; and

WHEREAS, N.J.S.A. 40:48-2 authorizes a municipality to make, amend, and repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this State or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality of its inhabitants;

WHEREAS, P.L. 2019, Ch. 291, specifically states that a municipality may enter a property in order to perform the lead service line replacement, as long as the owner and any residents of the property have been given at least 72 hours' notice; and

WHEREAS, the Township of Barnegat believes that the provision of clean, lead-free drinking water to its residents and customers is a public purpose beneficial to the Township of

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Barnegat as a whole and any benefit to any private land owner in accomplishing this purpose is incidental and subordinate to this primary public and governmental propose; and

WHEREAS, as part of its comprehensive plan to protect residents and customers from exposure to lead, the Township of Barnegat implemented a corrosion control system to reduce the lead levels in the water by inhibiting the corrosion of lead service lines: and

WHEREAS, for the health, safety and welfare of its residents and customers, the Township Committee of the Township of Barnegat, desires to require all property owners serviced by a lead service line to replace that service line through the program established by Barnegat Township; and

WHEREAS, timely access to private property to replace lead service lines is essential to maximizing the efficiency of the program; and

WHEREAS, due to the hazard that lead in the drinking water poses to the health and safety of customers, permission from the owner of the property to replace the lead service line is not required**.**

NOW THEREFORE BE IT ORDAINED by the Mayor and Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey that Chapter 74 of the Township Code entitled "Water and Sewer Utility" is amended and supplemented by adding Article X entitled "Mandatory Replacement of Lead Service Lines" and shall read as follows:

SECTION 1.

ARTICLE X. MANDATORY REPLACEMENT OF LEAD SERVICE LINES

§74-42. Definitions. The following definitions shall apply to the provisions in this article.

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CONTRACTOR

A licensed vendor which contracts with the Township of Barnegat to inspect and/or replace lead service lines.

DWELLINGS

A building or structure or part thereof containing one (1) or more dwelling units. Dwelling shall also apply to buildings and structures that are not used for residential purposes.

DWELLING UNIT

Any room or groups of rooms or any part thereof located within a building and forming a single habitable until with facilities that are used for designed to be used for living, sleeping, cooking, eating, or bathing.

DEPARTMENT

The Department of Water and Sewer of the Township of Barnegat, New Jersey.

LEAD SAFE

Any condition that does not allow access or exposure to lead, in any form, to the extent that adverse human health effects are possible.

LEAD SERVICE LINE

The water line on private property that leads to the structure or building that is connected to the main Township of Barnegat water line and is comprised in any part of lead, galvanized steel, or other material deemed by the Township of Barnegat or the NJDEP to contain lead or pose a risk of lead exposure through drinking water.

NJDEP

New Jersey Department of Environmental Protection.

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OCCUPANT

A person or persons in actual possession of and living in the building or dwelling unit.

OWNER

Any person who has legal title to any dwelling, with or without accompanying actual possession thereof; or, who has equitable title and is either in actual possession or collects rents therefrom; or, who is executor, executrix, trustee, guardian, or receiver of

the estate of the owner, or as mortgagee or as vendee in possession either by virtue of a Court order or by agreement or voluntary surrender of the premises by the person holding the legal title, or as collector of rents has charge, care or control of any dwelling or rooming house.

TOWNSHIP

The Township of Barnegat Water and Sewer service area where lead service lines have been identified.

§74-43. Lead Service Lines Prohibited.

It is hereby established that the existence of Lead Service Lines is prohibited in the Township of Barnegat. The owner of all properties with Lead Service Lines are required to cooperate with the Township of Barnegat to ensure that all lead service lines are eradicated in accordance with the provisions of this Chapter and with N.J.S.A. 58.12a-38 et seq.

§74-44. Mandatory Replacement of Lead Service Line.

A. The owner of any dwelling, building or structure serviced by a Lead Service Line is required to have the Lead Service Line on their property replaced.

B. The owner/occupant of any dwelling, building or structure shall cause their Lead Service Line to be replaced by any of the following methods:

1. Signing up for the Lead Service Line Replacement Program offered by the Township of Barnegat by executing a Right of Entry Form and allowing contractors to access their property to conduct the replacement. The Township of Barnegat, or its designee, shall provide the contractor with access to the property to verify the existence of a Lead Service Line, and/or to replace an existing Lead Service Line; or

2. Replacing the Lead Service Line on their own and at their own expense. If an owner selects this option, replacement must be completed within 90 days of the effective date of this ordinance. An extension of time may be granted where the owner can demonstrate, to the satisfaction of the Township of Barnegat, that a good faith effort has been made to comply with the ordinance. An owner is required to provide the Township of Barnegat with proof that the Lead Service Line has been replaced. Proof must include, at a minimum: permit issued by the Township of Barnegat to a licensed plumber authorized to do the work; an invoice from the contractor who completed the work; a copy of the estimate along with any report of the work completed; and an inspection report that includes photographic evidence of the work done, verifying the removal.

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§74-45. Exclusion of Requirement; Proof Required

A property owner may be excluded from the Mandatory Replacement of its Lead Service Line by providing the Township of Barnegat, within 90 days of the effective date of this ordinance, with written proof from a licensed and certified plumber that it does not have a Lead Service Line on its property and/or that the Lead Service Line was previously removed and replaced. The Township of Barnegat may require additional confirmation.

§74-46. Authorization to Access Property

A. The Township of Barnegat shall secure entrance to the property from the owner or current occupant of the dwelling, building or structure, and the Township shall incur no liability from the owner. The Township of Barnegat, its designee, or a contractor will provide the owner and current occupant with a Right of Entry form for completion, or with an internet link to access the form. The Right of Entry form will provide the contractor with access to the property to verify the existence of a Lead Service Line, and, if needed, access to the property to replace the Lead Service Line. The Township of Barnegat, or its designee, shall replace the Lead Service Line and shall restore the property to its original condition, or as close as possible to its original condition.

B. If access is granted by the owner or current occupant of the dwelling, building or structure, then the owner or occupant shall be held harmless, and no liability shall incur to the Township of Barnegat or occupant due to the replacement of the Lead Service Line by the Township of Barnegat or its designee.

C. If access is denied by the current occupant or owner, the Township of Barnegat shall commence procedures, including filing a Court action, to conduct the replacement of the Lead Line Service.

§74-47. Notice of Access to Property

A. At least two weeks before entering a property to perform a service line inspection of a Lead Service Line replacement, the Township of Barnegat or its contractor shall notify the owner of record of the property and any residents of the property of the inspection or Lead Service Line replacement.

B. The Township of Barnegat shall make every effort to notify the owner of record and any residents of the property in person, but if the owner or occupants are unable to reach in person, the Township of Barnegat shall post, at least 72 hours before entering the property, a written notification in a prominent location of the property.

C. The notification shall include the scheduled date and time of the inspection or Lead Service Line replacement, the name and contact information of the

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Township of Barnegat's contractor who will be performing the work, the extent of any water service disruptions and information regarding the potential penalties if the Township of Barnegat is unable to gain access to the property for the stated purpose.

D. Any violation of this chapter by either the property owner, landlord, or tenant by the refusal to allow access to the property or preventing the performance of the work shall be punished by a penalty as provided in this Article.

§74-48. Proof of Lead Service Line Replacement for Sale or Transfer of Ownership or Certificate of Occupancy

A. Upon the sale or transfer of ownership of any dwelling, building, or structure, the owner must provide proof that the Lead Service Line has been replaced in order to secure a Certificate of Occupancy and other required certifications.

B. Upon the sale of any city owned property, within 90 days of the closing, the purchaser of said property is responsible for replacing the Lead Service Line.

§74-49. Reimbursement to the Township for Costs Incurred for Replacing Lead Service Lines

A. Pursuant to N.J.S.A. 58:12A-44, notwithstanding provisions of N.J.S.A. 40:56-1 et seq., any costs incurred by the Township for to access or replace a lead line service, excluding any portion funded by grants or other subsidies, may be borne by all customers of the utility system or may be assessed to the property owner in the same manner provided for the assessment of local improvements pursuant to N.J.S.A. 40:56-1 et seq. Notice to the Director of the Division of Local Government Services and Department of Community Affairs.

B. The determination as to whether assess the property of a property owner or for the improvements pursuant to N.J.S.A. 40:56-1 et seq. or to have the costs borne by all customers of the utility, shall be in the sole discretion of the Township.

§74-50. Violations and Penalties

Violations of this ordinance by any person or corporation shall be subject to a fine of at least two hundred fifty dollars ($250), but not exceeding two thousand dollars ($2,000.00). Each day that a violation occurs shall be deemed a separate and distinct offense.

1. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistency only.

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2. If any provision of this ordinance or application thereof to any person(s) or circumstance is judged invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications or the ordinance that can be given effect without the invalidated provision or application and to this end of the provisions of this ordinance are declared severable.

3. The amendment and supplements of this ordinance shall take effect upon final pass and publication in accordance with the laws of the State of New Jersey.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Barnegat on the **7th day of November, 2024**, and will be considered for second and final passage at a meeting of the Township Committee to be held on the **3rd day of December, 2024, at 10:00 AM** at the Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

Donna M. Manno, RMC
Municipal Clerk

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