

ORDINANCE NO. 2008-22

**AN ORDINANCE OF THE TOWNSHIP OF BARNEGAT,
COUNTY OF OCEAN, STATE OF NEW JERSEY,
AMENDING AND SUPPLEMENTING CHAPTER 74
(WATER/SEWER UTILITIES) OF THE CODIFIED
ORDINANCES OF THE TOWNSHIP OF BARNEGAT**

WHEREAS, the Township of Barnegat, County of Ocean, State of New Jersey (hereinafter referred to as the “Township”), has entered into an agreement entitled “Water Facilities Agreement” with Mark Madison, LLC, (hereinafter referred to as the “WFA”) which WFA is dated June 5, 2006; and

WHEREAS, the aforementioned WFA is on file at the office of the Township Clerk and can be reviewed by the public during normal business hours; and

WHEREAS, the WFA, in part, provides that Mark Madison, LLC will install certain water facilities including, but not being limited to, a well with a capacity of 1000 gallons per minute to the water supply, an associated water treatment plant, and an elevated water storage tank with a capacity of one million gallons (collectively referred to as the “water facilities”); and

WHEREAS, the WFA provides, in part, a means by which Mark Madison, LLC will be reimbursed for constructing the over-sizing of the water facilities, inasmuch as the proposed water facilities will benefit not only future developments to be constructed by and on behalf of Mark Madison, LLC but by other developers and unrelated property owners throughout Barnegat Township; and

WHEREAS, the Township believes it is necessary and proper to codify the terms of the aforementioned WFA by ordinance, and furthermore to delineate and define the manner in which Mark Madison, LLC could be reimbursed by Future Users as defined in the WFA, in the Service Area (not by the Township or its taxpayers) when those developers seek development approval in the Service Area, and be permitted to utilize a portion of the off-site water facilities which have been funded by Mark Madison, LLC:

NOW, THEREFORE, BE IT ORDAINED this 7th day of July 2008, by the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, as follows:

SECTION 1. Chapter 74 (Water/Sewer Utilities) is hereby amended and supplemented by the addition of Article V entitled Method of Calculation and Requirement for Payment of “Unit Reimbursement Amount” for persons benefiting from the water facility improvements constructed by Mark Madison, LLC in accordance with the Water Facilities Agreement dated June 5, 2006, as follows:

Subsection A: All terms and conditions set forth in the WFA entered into by and between the Township of Barnegat and Mark Madison, LLC, a New Jersey corporation, dated June 5, 2006 are incorporated herein by reference as if set forth more fully herein and repeated at length. A copy of the aforementioned WFA is on file with the Township Clerk at the Municipal Building in Barnegat Township, New Jersey, and can be reviewed during normal business hours.

Subsection B: In accordance with the aforementioned WFA, Future Users of property in the Service Area, except for those who are exempted herein and in the aforementioned WFA dated June 5, 2006, are required to pay a “Unit Reimbursement Amount” in order to partially repay Mark Madison, LLC for monies paid by Mark Madison, LLC to provide for the construction of the water facilities which are referenced in the aforementioned WFA. The intent of assessing all developers in the Service Area the Unit Reimbursement Amount is to reimburse and repay Mark Madison, LLC excess monies paid by Mark Madison, LLC for the over-sizing of the water facilities, while not imposing on the Township in any manner any obligation whatsoever to Mark Madison, LLC to pay for or accept any financial responsibility for those payments made by Mark Madison, LLC to over-size the water system.

Subsection C: Every Future User (other than as provided for in the aforementioned WFA dated June 5, 2006) of any property located within the Service Area shall pay to Mark Madison, LLC, via the Township, an amount as calculated in Subsections 11.02 and 11.03 of the WFA.

Subsection D: Water connection fees paid by Other Properties to the Township in accordance with Township Sewer and Water Facility Rules and Regulations shall be retained by the Township and not credited to Mark Madison, LLC.

Subsection E: The Township is under no obligation to pay to Mark Madison, LLC any of the Township funds in order that Mark Madison, LLC will recoup in full the reimbursement amount, as defined in the Agreement. All such payments shall come from Other Properties, pursuant to the provisions of the Agreement. Mark Madison, LLC in accordance with the Agreement may be reimbursed by various methods, all of which are specified in the Agreement including, but not limited to, a reimbursement from Other Properties within the Service Area on a pro rata basis.

SECTION 2. Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION 3. Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4. Effective Date. This Ordinance shall take effect upon publication in an official newspaper of the Township, as required by and in conformance with law and only if a stay has not been ordered by a Court of competent jurisdiction.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed by the Township Committee of Barnegat on first reading at a meeting held on the **7th day of July, 2008**. The Ordinance will be considered for second and final reading at a meeting of the Township Committee which is scheduled for the **21st day of July, 2008**, at **6:30 p.m.**, or as soon thereafter as the matter may be reached, at the Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey, at which time the public is invited to ask questions, raise objections, or provide public comment with regard to the proposed adoption of this Ordinance.

KATHLEEN T. WEST, RMC
Deputy Municipal Clerk

Prepared by:

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