

BOROUGH of KENNETT SQUARE
COUNTY of CHESTER, PENNSYLVANIA

ORDINANCE NO. 938

AN ORDINANCE OF THE BOROUGH OF KENNETT SQUARE, CHESTER COUNTY, COMMONWEALTH OF PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF KENNETT SQUARE, PENNSYLVANIA, CHAPTER 8, *HOUSING*, ARTICLE VIII, *USE AND OCCUPANCY CERTIFICATES*, RENAMING THE CHAPTER, AND INCLUDING UPDATED PROCEDURES FOR THE ISSUANCE OF USE AND OCCUPANCY CERTIFICATES IN ACCORDANCE WITH THE MUNICIPAL CODE AND ORDINANCE COMPLIANCE ACT.

WHEREAS, the Borough Council of the Borough of Kennett Square is empowered by section 1202 of the Borough Code, 8 Pa.C.S.A. § 1202, to enact regulations relating to the public health, safety, and welfare of the citizens of the Borough of Kennett Square;

WHEREAS, the Pennsylvania General Assembly amended the Pennsylvania Municipal Code and Ordinance Compliance Act (MCOCA), 68 P.S. §§ 1081-1083, on November 3, 2016, effective January 2, 2017;

WHEREAS, MCOCA establishes certain procedures for the issuance of use and occupancy certificates related to the sale of property, addressing both minor violations of municipal codes and ordinances and also "substantial violations" that make a property unfit for human habitation;

WHEREAS, the provisions of the Kennett Square Borough Code related to the issuance of use and occupancy certificates should be amended to comply with MCOCA; and

WHEREAS, the Borough Council intends to revise the procedures for issuing use and occupancy certificates per the requirements of MCOCA.

NOW, THEREFORE, be it ORDAINED and ENACTED by the Council of the Borough of Kennett Square, Chester County, Commonwealth of Pennsylvania, as follows:

SECTION 1

Chapter 8, *Housing* is hereby RENAMED as follows:

Chapter 8 – HOUSING AND OTHER NONRESIDENTIAL OCCUPANCIES

SECTION 2.

Chapter 8, *Housing*, Article VIII, *Use and Occupancy Certificates*, is hereby REPEALED and REPLACED with the following amended and new sections:

8-116 - Definitions.

The words and terms used in this article (Chapter 8, Article VIII) shall have the following meanings:

- (a) "Borough" means the Borough of Kennett Square, Chester County, Pennsylvania, and any designated agents or representatives thereof.
- (b) "Borough Codes" means the Pennsylvania Construction Code Act, Act 45 of 1999, 35 P.S. §§ 7210.101—7210.1103, as amended, and the regulations thereunder; the Uniform Construction Code, contained in 34 Pa. Code, Chapters 501-405, as amended from time to time, which has been adopted by ordinance as the Building, Mechanical, and Electrical Codes of the Borough of Kennett Square; and the International Property Maintenance Code, 2003 edition, as published by the International Code Council and as amended, which has been adopted by ordinance as the Property Maintenance Code of the Borough of Kennett Square.
- (c) "Date of purchase." The date on which title and right to possess the property transfers to the purchaser or, in cases where the property is sold pursuant to the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, the first day following the right of redemption period authorized under the Municipal Claim and Tax Lien Law.
- (d) "Person" means any individual, partnership, association, corporation, legal representative, or trustee.
- (e) "Substantial violation" means a violation of Borough Codes that makes a building, structure, dwelling unit, or any part thereof unfit for human habitation and is discovered during the course of a Borough inspection of a property and disclosed to the record owner, owner's agent, prospective purchaser, or prospective tenant through the issuance of a use and occupancy inspection report (U&O Report).
- (f) "Temporary access certificate" means a certificate issued by the Borough as the result of a Borough inspection of a property incident to the sale, change in use or occupancy, or change in residential or nonresidential tenant of the property that identifies at least one substantial violation. The purpose of the certificate is to authorize the owner, owner's agent, prospective purchaser, or prospective tenant to access the property to correct the identified substantial violations. No person may occupy or use a property during the term of a temporary access certificate, but the owner, owner's agent, purchaser, or tenant may store personalty related to the proposed use or occupancy of the property or needed to repair the substantial violations during the time of the temporary access certificate.

- (g) "Temporary use and occupancy certificate" means a certificate issued by a municipality as a result of a Borough inspection of a property incident to the sale, change in use or occupancy, or change in nonresidential tenant of the property that reveals a violation, but not a substantial violation. The purpose of the certificate is to authorize the owner, owner's agent, prospective purchaser, existing tenant, or prospective tenant to fully utilize or reside in the property while correcting the identified violations.
- (h) "Unfit for human habitation" means a condition which renders a building, structure, dwelling unit, or any part thereof, dangerous or injurious to the health, safety or physical welfare of an occupant or the occupants of neighboring dwellings. The condition may include substantial violations of Borough Codes that show evidence of: a significant increase to the hazards of fire or accident; inadequate sanitary facilities; vermin infestation; or a condition of disrepair, dilapidation, or structural defects such that the cost of rehabilitation and repair would exceed one-half of the agreed-upon purchase price of the property.
- (i) "Use and occupancy certificate" means a certificate issued by the Borough stipulating that the property meets all Borough Codes and may be used or occupied as intended.
- (j) "Violation" means a violation of Borough Codes that does not rise to the level of a substantial violation and is discovered during the course of a Borough inspection of a property and disclosed to the record owner, owner's agent, prospective purchaser, or prospective tenant of the property through the issuance of a U&O Report.

8-117 - Certificate required.

No structure, building, dwelling unit, or any part thereof, shall be used or occupied, change ownership, or change residential or nonresidential tenant until a use and occupancy certificate has been issued by the Borough. The Borough shall, after application for such certificate by the owner, agent of the owner, prospective purchaser, or prospective residential or nonresidential tenant of the premises to be occupied, on forms provided for such purpose by the Borough, inspect the structure, building, or dwelling unit no later than thirty (30) days prior to settlement, occupation, or change of use of the premises pursuant to the following:

- (a) General compliance with the provisions of the applicable section(s) of Borough Codes.
- (b) All existing structures, buildings, or dwelling units shall be provided with a minimum of one single station smoke detector in all bedrooms and on each floor level, including basement. When actuated, the audible alarm of the smoke detector shall be of sufficient volume to be heard throughout the floor level on which the detector is located.

- (c) All new structures, buildings, or dwelling units shall be provided with a smoke detection system meeting the requirements of the Borough Codes. When actuated, the audible alarm of the smoke detection system shall meet the requirements of the Borough Codes referencing decibel levels for smoke detection systems.
- (d) All applicable Borough ordinances, rules, or regulations including provisions that no roof and/or floor drains shall discharge to the Borough's sanitary sewer system.
- (e) No use and occupancy certificate shall be issued until all information and fees, as requested within the application, have been received, reviewed, and approved by the Borough.

8-118 - Certificate contents and responsibility for obtaining.

The use and occupancy certificate shall state the use to which the structure, building, or dwelling unit is to be put. No structure, building, dwelling unit, or any part thereof, shall be used or occupied, change ownership, or change residential or nonresidential tenant until a use and occupancy certificate has been issued by the Borough in accordance with this article (Chapter 8, Article VIII). It shall be the responsibility of any person who/which changes the use of, sells, or otherwise transfers ownership of any structure, building, or dwelling unit or, changes residential or nonresidential tenant, to apply for and obtain the use and occupancy certificate required by this article (Chapter 8, Article VIII) prior to the transfer of ownership rights or change of use or occupancy of such premises. Failure on the part of a seller, transferor, or owner to obtain the required certificate shall not excuse the purchaser, transferee, or residential or nonresidential tenant from complying with the requirements of this article (Chapter 8, Article VIII).

8-119 – Issuance of use and occupancy certificate.

Following an inspection of the structure, building, dwelling unit, or part thereof required by section 8-117, the Borough shall issue to the owner, agent of the owner, prospective purchaser, or prospective residential or nonresidential tenant of the premises to be occupied a certificate in the following manner:

- (a) If the inspection reveals no violations, the Borough shall issue a use and occupancy certificate.
- (b) If the inspection reveals at least one violation, but no substantial violations, the Borough shall specifically note those items on a U&O Report and shall issue a temporary use and occupancy certificate.
- (c) If the inspection reveals one or more substantial violations, the Borough shall specifically note those items on a U&O Report and shall issue a temporary access certificate.

8-120 – Exception for Financial Institutions.

- (a) Except as set forth in subsection (b), the requirements of this article (Chapter 8, Article VIII) do not apply to any of the following that take title to property for the purpose of holding the property for sale to offset losses incurred on a loan or other obligation in default secured by a mortgage, deed of trust, or other lien on the property:
 - (1) Bank.
 - (2) Savings association.
 - (3) Credit union.
 - (4) Mortgage lender.
 - (5) Financial institution similar to an institution listed in sub-paragraphs (1) through (4) above.
 - (6) Subsidiary of a financial institution listed in sub-paragraphs (1) through (5) above.
- (b) A financial institution or other business organization not subject to this act under subsection (a) may be required by the Borough to correct a substantial violation.

8-121 – Compliance requirements.

- (a) **Purchasers of property.** Within twelve (12) months of the date of purchase, the purchaser of a property known to be in violation of Borough Codes shall, at its option either:
 - (1) Bring the property into compliance with Borough Codes; or
 - (2) Demolish the structure, building, dwelling unit, or part thereof, in accordance with all applicable Borough ordinances, rules, and regulations.
- (b) **Changes in use, occupancy, or tenant.** Within ninety (90) days of the issuance of a U&O Report related to a change in use or occupancy or a change in residential or nonresidential tenant that identifies any violations or substantial violations, the owner, owner's agent, prospective purchaser, existing residential or nonresidential tenant, or prospective residential or nonresidential tenant shall bring the structure, building, dwelling unit, or part thereof into compliance with Borough Codes.
- (c) **Extensions.** At the request of the owner, owner's agent, prospective purchaser, existing residential or nonresidential tenant, or prospective residential or nonresidential tenant, the Borough may negotiate, at its discretion, longer time periods for maintenance and repair of the building, structure, dwelling unit, or part thereof.

8-122 – Reinspection of property.

- (a) At the expiration of the time period set forth in section 8-121 or before that time, if requested by the owner, owner's agent, prospective purchaser, existing residential or nonresidential tenant, or prospective residential or nonresidential tenant, the Borough shall re-inspect the property for the purpose of determining compliance with the violations identified in the U&O Report.
- (b) If a temporary access permit was issued and re-inspection demonstrates that the substantial violations noted in the U&O Report have been corrected but other cited violations have not yet been corrected, the Borough shall issue a temporary use and occupancy permit, valid for the time remaining on the original temporary access permit.
- (c) If the re-inspection demonstrates that all violations noted in the U&O Report have been corrected, the Borough shall issue a use and occupancy certificate for the property.

8-123 - Revocation.

Any use and occupancy certificate issued hereunder may be revoked in the event that the structure, building, dwelling unit, or part thereof, is determined to be unsafe, uninhabitable, or that a condition exists that is in violation of any ordinance of the Borough, or that the actual use is in violation of any ordinance of the Borough. In the event that the use and occupancy certificate is issued subject to conditions, the certificate may be revoked if the conditions remain unsatisfied within the time limit provided for at the time of issuance of the certificate.

8-124 - Fees.

The applicant for a use and occupancy certificate shall pay, at the time of application, a fee to the Borough in an amount established by a fee schedule which has been adopted by resolution by the Borough Council. The fee shall be nonrefundable in the event that a use and occupancy certificate is not issued after the required inspection.

8-125 - Violations and penalties.

- (a) **Failure to obtain a use and occupancy certificate.** Any person who or which occupies or uses any structure, building, dwelling unit, or part thereof, without obtaining a use and occupancy certificate or, who or which continues to occupy or use any structure, building, dwelling unit, or part thereof following the revocation of a previously issued use and occupancy certificate shall be in violation of this

article (Chapter 8, Article VIII) and shall be subject to the payment of fines and penalties of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) in addition to the cost of prosecution and collection, and, in default thereof, to imprisonment for a period not exceeding thirty (30) days as provided by law. Each and every day that occupancy or use of any structure, building, dwelling unit, or part thereof shall continue without the certificate required by this article (Chapter 8, Article VIII), after notice to cease and desist such occupancy or use has been given, shall constitute a separate offense and be punishable as such.

(b) **Failure to comply with the requirements of § 8-121.** Failure to comply with the requirements of section 8-121 shall result in the:

- (1) Revocation of the temporary access certificate or temporary use and occupancy certificate.
- (2) The owner being subject to the fines and penalties set forth in subsection (a) relating to the occupation of a property without a use and occupancy certificate.
- (3) The owner being personally liable for the costs of maintenance, repairs, or demolition sufficient to correct the cited violations, and a fine of not less than \$1,000 and not more than \$10,000.

SECTION 2. Repealer.

Any and all other ordinances or parts of ordinances in violation or in conflict with the terms, conditions and provisions of this ordinance are hereby repealed to the extent of such irreconcilable conflict.

SECTION 3. Severability.

The terms, conditions, and provisions of this ordinance are hereby declared to be severable, and, should any portion, part, or provision of this ordinance be found by a court of competent jurisdiction to be invalid, unenforceable, or unconstitutional, the Borough declares its intent that the ordinance shall have been enacted without regard to the invalid, unenforceable, or unconstitutional portion, part, or provision of this ordinance.

SECTION 4. Effective date.

This ordinance shall become effective immediately.

DULY ORDAINED and **ENACTED** this 7th day of August, 2017, by the Borough Council of the Borough of Kennett Square, Chester County, Pennsylvania, in lawful session duly assembled.

BY: 

Danilo P. Maffei
Borough Council President

ATTEST:



Karen L. Scherer
Borough Secretary

[BOROUGH SEAL]

APPROVED this 7th day of August, 2017.


Matthew W. Fetick
Mayor