

AN ORDINANCE

BY VICE MAYOR BYINGTON NO 4827

REPEALING EXISTING SECTION 17-107.5, *PRE-SALE INSPECTION AND CERTIFICATE OF OCCUPANCY REQUIRED FOR NEW OWNERS AND TENANTS*, OF THE OAKWOOD PROPERTY MAINTENANCE CODE, AND ENACTING NEW SECTION 17-107.5, *PRE-SALE INSPECTION AND CERTIFICATE OF OCCUPANCY REQUIRED FOR NEW OWNERS AND TENANTS*, OF THE OAKWOOD PROPERTY MAINTENANCE CODE, AND DECLARING AN EMERGENCY.

WHEREAS, since 1968 the city has operated a successful pre-sale inspection program, whereby sellers of real estate undergo a code compliance inspection, correct any noted defects, and obtain a certificate of occupancy for their buyers; and

WHEREAS, on May 4, 2016, a federal lawsuit was filed against the city, *Thompson et al v. City of Oakwood et al*, US District Court for the Southern District of Ohio, Case No. 3:16-cv-00169, challenging the constitutionality of the pre-sale inspection program due to its lack of a procedure for obtaining administrative search warrants in appropriate cases and the plaintiff's concern that one could be criminally punished for exercising rights guaranteed under the 4th Amendment to the United States Constitution; and

WHEREAS, a warrant procedure existed in all versions of the pre-sale inspection ordinance prior to 1992, but was inadvertently omitted when the city's ordinances were re-codified by a third-party contractor in 1992; and

WHEREAS, despite the plaintiff's interpretation of the pre-sale inspection ordinance, no person has ever been criminally punished for exercising his or her constitutional right to refuse consent to an inspection; and

WHEREAS, on advice of legal counsel, Council believes that it is in the city's best interest, and beneficial to the public health, safety and welfare, to repeal the existing pre-sale inspection ordinance and enact a replacement, so as to include an administrative search warrant procedure and to clarify that exercising one's 4th Amendment rights does not constitute an unlawful act;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAKWOOD, MONTGOMERY COUNTY, OHIO:

SECTION I:

Existing Section 17-107.5, *Pre-Sale Inspection and Certificate of Occupancy Required for New Owners and Tenants*, of the Oakwood Property Maintenance Code shall be and is hereby repealed.

SECTION II:

New Section 17-107.5, *Pre-Sale Inspection and Certificate of Occupancy Required for New Owners and Tenants*, of the Oakwood Property Maintenance Code, is hereby enacted and the same shall be codified as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION III:

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements including § 121.22, Ohio Revised Code.

SECTION IV:

This Ordinance is hereby declared to be an emergency measure and as such shall take effect immediately, on the basis that doing so is necessary to assist in resolving the ongoing litigation described above and on the basis of preservation of the public peace, health, safety and welfare.

PASSED BY THE COUNCIL OF THE CITY OF OAKWOOD this 5th day of July, 2016.



Mayor William D. Duncan

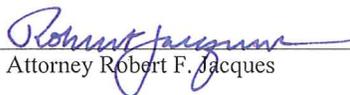
ATTEST:



Clerk of Council

TO THE CLERK:

Please publish by incorporating the same into the Codified Ordinances of the city of Oakwood, Ohio.



City Attorney Robert F. Jacques

17-107.5 PRE-SALE INSPECTION AND CERTIFICATE OF OCCUPANCY REQUIRED FOR NEW OWNERS AND TENANTS.

The title of this section is amended to read as set forth above. The content of this section is revised to read as follows:

- A. It shall be unlawful for the owner of any real estate premises to transfer legal or equitable ownership of that premises ("title"), or change of tenant, without having obtained a pre-sale inspection of it under this code. This inspection will enable the code official to work toward accomplishing the purposes of this code by listing any repairs or other work necessary to eliminate any unsafe or hazardous conditions, to comply with applicable requirements of the Fire Code, Zoning Code and other ordinances, and also to correct any unlawful nuisance conditions in the form of violations of this Property Maintenance Code. Such an inspection and list shall be part of the process of issuing the required certificate of occupancy.
- B. Application for a pre-sale inspection shall be made on such form and in such manner as may be prescribed from time to time by the code official. The city may charge a fee for this service as provided for under Chapter 153.
- C. Within 21 days after application was made for a pre-sale inspection, the code official shall have completed the inspection, compiled a list of any items to be brought into compliance with this code and applicable provisions of the Fire Code, Zoning Code and other ordinances, and shall have issued a violation letter to the owner or lienholder of a premises. This period of time may be extended by the code official if a delay is caused by any matter beyond the reasonable control of that official.
- D. A certificate of occupancy shall be valid for one year after the violations have been corrected to the satisfaction of the code official or until 60 days after the premises may be transferred to a new owner or tenant, whichever occurs sooner.
- E. If the owner, occupant, or agent thereof does not consent to the proposed inspection, the code official may appear before any judge in a court of competent jurisdiction and seek an administrative search warrant to allow an inspection. Any such application shall be made within ten (10) calendar days after the nonconsent. The application for the warrant shall specify the basis upon which the warrant is being sought and shall include a statement that the inspection will be limited to a determination whether there are violations of the code provisions identified in this section. The court may consider any of the following factors

along with such other matters as it deems pertinent in its decision as to whether a warrant shall issue:

1. Eyewitness account of violation;
2. Citizen complaints;
3. Tenant complaints;
4. Plain view violations;
5. Violations apparent from city records;
6. Property deterioration;
7. Age of property;
8. Nature of alleged violation;
9. Condition of similar properties in the area;
10. Documented violations on similar properties in the area;
11. Passage of time since last inspection;
12. Previous violations on the property.

If a warrant is issued, no owner, occupant, or agent thereof shall fail or neglect, upon presentation of a warrant, to properly permit entry therein by the code official or his/her duly authorized designee for the purpose of inspection and examination pursuant to this section and consistent with the terms of the warrant. If the court declines to issue a warrant, or if no warrant is sought, the inspection shall still take place but the scope thereof shall be limited to such areas as are in plain view. A limited-scope inspection conducted pursuant to this paragraph shall be considered an "inspection" for purposes of Section 17-106 and all other provisions of Title 17 pertaining to the pre-sale inspection program set forth in this section. No criminal penalty shall attach, nor shall any certificate of occupancy be denied, solely by reason of the owner's, occupant's, or agent's refusal to consent to a full inspection.

A certificate of occupancy signed by the code official shall be evidence that the premises complies with the requirements of this code and all other applicable ordinances, provided however, that if a limited-scope inspection is conducted pursuant to subsection E above, the certificate of occupancy shall note that fact and shall not constitute evidence of code compliance as to any uninspected portions of the premises. If the inspection disclosed aspects of the property not in compliance, the certificate shall be merely a conditional certificate of occupancy. The condition shall be that the defective aspects of the premises must be brought into compliance with this code within such reasonable length of time as may be set forth in the certificate.

Such a conditional certificate shall be deemed to be a notice under 17-110.1 and/or 17-110.2 that the premises and its owners are in violation of this code or other applicable ordinances and that the unsafe, hazardous, or unlawful conditions must be corrected. The certificate shall constitute a notice, as referred to in 17-106.1 and its subparts, and shall include all matters required by that section.