

ORDINANCE NO: 2019-32

INTRODUCED BY: Mr. Richman

AN ORDINANCE AMENDING SECTIONS 1343.01, 1343.04 AND 1343.07 OF CHAPTER 1343, "POINT-OF-SALE INSPECTIONS," OF THE CODIFIED ORDINANCES OF THE VILLAGE OF MORELAND HILLS REGARDING INSPECTION AND ESCROW PROCEDURES, AND DECLARING AN EMERGENCY

WHEREAS, federal courts have recently struck down municipal point-of-sale ordinances as unconstitutional if the ordinance makes the inspection involuntary and the failure to consent to an inspection results in the imposition of criminal penalties; and

WHEREAS, Chapter 1343, "Point-of-Sale," of the Codified Ordinances of the Village of Moreland Hills requires the Building Commissioner to obtain an administrative search warrant if a property owner does not consent to an inspection and, thus, is constitutional under the recent federal court decisions; and

WHEREAS, despite the foregoing, in reviewing Chapter 1343, "Point-of-Sale Inspections", of the Codified Ordinances of the Village of Moreland Hills, the Mayor and the Building Commissioner have recommended that certain sections be amended regarding the procedures to obtain an administrative search warrant, what occurs if a court does not issue an administrative search warrant, and placing a cap on the amount escrowed to cover code violations; and

WHEREAS, Council believes it is in the best interest of the Village and furthers the public health, safety and general welfare to amend Chapter 1343, "Point of Sale Inspections," as set forth in this Ordinance.

NOW, WHEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MORELAND HILLS, CUYAHOGA COUNTY, STATE OF OHIO, THAT:

Section 1. Existing Section 1343.01, "Definitions," of Chapter 1343, "Point-of-Sale Inspections," of the Codified Ordinances of the Village of Moreland Hills, Ohio shall be amended to read as follows:

"1343.01 DEFINITIONS.

The following words and phrases when used in this Chapter 1343 shall mean the following:

- (a) "CCGHD" means the Cuyahoga County General Health District.
- (b) "Certificate of Inspection" means the document issued by the Building Commissioner and required by this chapter to be presented to the prospective purchaser, grantee, or transferee. An "Initial Certificate of Inspection" lists all known violations of this chapter and allows the transfer of a dwelling upon the condition that the purchaser ~~comply~~ **complies** with the Orders for Correction listed thereon. A "Final Certificate of Inspection" means the document issued by the Building Commissioner indicating compliance with the provisions of this chapter.

(c) "Compliance Certificate" means the document issued by the Building Commissioner indicating compliance with any Orders for Correction issued pursuant to this chapter.

(d) "Dwelling" means any dwelling as defined in Section 1123.03(b)(30) of the Codified Ordinances.

(e) "Orders for Correction" means the document issued by the Building Commissioner requiring an owner to correct known violations of this chapter and/or the document issued by the Cuyahoga County General Health District requiring an owner to correct known violations for household sewage treatment system or private water system requirements.

(f) **"Owner" shall mean the owner of the Premises or an agent of the owner of the Premises.**

(fg) "Premises" shall mean land and buildings.

(gh) "Private water system" means a water system, such as a water well, as defined in Ohio Revised Code Section 3701.344.

(hi) "Safety hazard" means a condition which could cause serious or life-threatening injury or death at any time.

(ij) "Rental dwelling" means a dwelling as defined in Section 1363.01 of the Codified Ordinances.

(jk) "Vacant dwelling" means a dwelling as defined in Section 1361.01 of the Codified Ordinances."

Section 2. Existing Section 1343.01, "Definitions," of Chapter 1343, "Point-of-Sale Inspections," of the Codified Ordinances of the Village of Moreland Hills, Ohio, as it existed prior to the effective date of this Ordinance is hereby repealed.

Section 3. Existing Section 1343.04, "Application; Inspection; Processing of Application; Issuance of Certificate of Inspection; and Effective Period of Certificate of Inspection," of Chapter 1343, "Point-of-Sale Inspections," of the Codified Ordinances of the Village of Moreland Hills, Ohio shall be amended to read as follows:

"1343.04 APPLICATION; INSPECTION; PROCESSING OF APPLICATION; ISSUANCE OF CERTIFICATE OF INSPECTION; AND EFFECTIVE PERIOD OF CERTIFICATE OF INSPECTION.

(a) **Application.** Application for a Certificate of Inspection shall be made by the owner or an agent of the owner, upon forms provided by the Building Commissioner.

(b) **Inspection.**

(1) The application shall inform the ~~applicant~~ **owner** that the owner has a constitutional right to refuse entry by Village inspectors without a search warrant.

(2) If the ~~applicant~~ **owner** consents to the inspection, the parties shall agree on a time, during regular business hours of the Building Commissioner, when the inspection is to occur.

(3) If the ~~applicant~~ **owner** refuses to consent to the inspection or consent is otherwise unobtainable, the inspection shall occur only after a search warrant is obtained **from a court of competent jurisdiction** authorizing entry by the Building Commissioner.

- A. 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 Chapter. 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:**
- i. Eyewitness account of violation;**
 - ii. Citizen complaints;**
 - iii. Tenant complaints;**
 - iv. Plain view complaints;**
 - v. Violations apparent from Village records;**
 - vi. Property deterioration;**
 - vii. Age of property;**
 - viii. Nature of alleged violations;**
 - ix. Condition of similar properties in the area;**
 - x. Documented violations on similar properties in the area;**
 - xi. Passage of time since last inspection; and**
 - xii. Previous violations on the property.**
- B. No criminal penalty, or any penalty or fine, shall attach, solely by reason of the owner's refusal to consent to an inspection.**
- C. If the court declines to issue a warrant, or if no warrant is sought, the Building Commissioner may complete a limited exterior inspection by evaluating the exterior areas in plain view from the right of way or any neighboring properties for which the Building Commissioner has been granted consent to enter, and the Building Commissioner may issue a Certificate of Inspection based on the limited exterior inspection.**

(c) Processing of Application.

- (1) Upon receipt of a complete application, including payment of the required fee, the Building Commissioner shall inspect the dwelling to determine compliance with:
 - i. Chapter 1359 relating to residential smoke detector and carbon monoxide detector requirements.;
 - ii. Chapter 1351 and Chapter 1365 relating to exterior property maintenance requirements; and
 - iii. The Building Commissioner shall determine whether any condition exists at the premises that in the opinion of the Building Commissioner constitutes a safety hazard.
- (2) The Building Commissioner, in circumstances where a septic system and/or private water system is located on the premises of the dwelling, shall forward a copy of the application to the CCGHD. The CCGHD will inspect the septic system and/or private water system in accordance with its requirements and advise the Building Commissioner if the septic

system is in compliance with CCGHD household sewage treatment system and private water system requirements.

- (3) The Building Commissioner, in circumstances where a vacant dwelling, regardless of whether the vacant dwelling is registered in accordance with Chapter 1361, shall conduct, upon receipt of an exterior and interior inspection request, the inspection required by Chapter 1361.
- (4) The Building Commissioner, in circumstances where a rental dwelling, regardless of whether the rental dwelling is registered in accordance with Chapter 1363, shall conduct, upon receipt of an exterior and interior inspection request, the inspection required by Chapter 1363.

(d) Issuance of Certificate of Inspection.

- (1) A Certificate of Inspection shall be issued within seven (7) days of obtaining access to the property and, if required, obtaining the report from the CCGHD.
- (2) A Final Certificate of Inspection shall be issued if the premises are in compliance with this chapter. A Final Certificate of Inspection shall contain the following information and any other relevant information deemed necessary by the Building Commissioner:
 - A. The street address, permanent parcel number or other identifying characteristics of the property;
 - B. The name and address of the owner and the applicant, if different than the owner;
 - C. A copy of each Compliance Certificate, if any, issued by the Building Commissioner; and
 - D. A statement regarding compliance with the required point-of-sale inspections.
- (3) An Initial Certificate of Inspection shall be issued if the premises are not in compliance with this chapter and/or the owner or the owner's agent are unable to comply with the Orders For Correction, issued in accordance with this chapter, prior to title transfer. An Initial Certificate of Inspection shall contain the following information and any other relevant information deemed necessary by the Building Commissioner:
 - A. The street address, permanent parcel number or other identifying characteristics of the property;
 - B. The name and address of the owner and the applicant, if different than the owner;
 - C. A statement regarding compliance with the required point-of-sale inspections;
 - D. A list of any Orders for Correction issued;
 - E. The statement regarding unoccupied dwellings with a septic system required by Section 1343.06, if applicable;
 - F. A list of any known Code violations for a vacant dwelling;
 - G. A list of any known Code violations for a rental dwelling; and
 - H. A statement requiring the purchaser to comply with the Orders for Correction within the time set forth on the Initial Certificate of Inspection.

- (e) Effective Period of Certificate of Inspection.
- (1) A Final Certificate of Inspection is valid for a period of one (1) year from the date of issuance. In the case of resale within the one year period, the Certificate of Inspection shall be valid for the remainder of the one year period.
 - (2) An Initial Certificate of Inspection is valid for a period of ninety (90) days from the date the Orders for Correction were issued.
 - (3) Upon the issuance of a Compliance Certificate for all Orders for Correction, a Final Certificate of Inspection shall be issued.
 - (4) An Initial Certificate of Inspection that contains the unoccupied dwelling with septic system statement requirement in Section 1343.06 is valid for a period of one (1) year provided that no Orders for Correction were issued and the dwelling remains unoccupied and, therefore, not subject to CCGHD testing. In the case of resale within the one year period, the Initial Certificate of Inspection shall be valid for the remainder of the one year period provided that the dwelling remains unoccupied and, therefore, not subject to CCGHD testing.
 - (5) An Initial Certificate of Inspection that lists any Code violations for a vacant dwelling or a rental dwelling is valid for a period of ninety (90) days from the date of violation issuance or is valid for the period of time provided in the violation notice to correct such violations, whichever is longer. Upon the issuance of a Compliance Certificate for all Code violations, a Final Certificate of Inspection shall be issued.”

Section 4. Existing Section 1343.04, “Application; Inspection; Processing of Application; Issuance of Certificate of Inspection; and Effective Period of Certificate of Inspection,” of Chapter 1343, “Point-of-Sale Inspections,” of the Codified Ordinances of the Village of Moreland Hills, Ohio, as it existed prior to the effective date of this Ordinance is hereby repealed.

Section 5. Existing Section 1343.07, “Purchaser Signature on Certificate of Inspection and Deposit in Escrow; Escrow Agent Obligations; and Vacant Dwelling Escrow Obligations,” of Chapter 1343, “Point-of-Sale Inspections,” of the Codified Ordinances of the Village of Moreland Hills, Ohio shall be amended to read as follows:

“1343.07 PURCHASER SIGNATURE ON CERTIFICATE OF INSPECTION AND DEPOSIT IN ESCROW; ESCROW AGENT OBLIGATIONS; AND VACANT DWELLING ESCROW OBLIGATIONS.

(a) The seller shall obtain the signature of the purchaser on the Certificate of Inspection and shall, when an escrow account has been established, deposit such signed Certificate of Inspection in the escrow account.

(b) No person, agent, firm, entity, or corporation acting in the capacity of an escrow agent in any real estate transaction involving the bona fide sale, transfer, or conveyance of any dwelling, or the land upon which such buildings are located, within the Village shall file or record any instrument to transfer title thereto or disburse any funds from such sale until a Certificate of Inspection, signed by the purchaser, has been deposited with the escrow agent.

- (c) Rental Dwelling Escrow and Vacant Dwelling Escrow.
- (1) If all Code violations relating to a rental dwelling or vacant dwelling are not corrected prior to transfer of title, an escrow account shall be established by a party to the transfer, a deposit amount of not less than one thousand dollars (\$1,000.00) and ~~equal to one hundred percent (100%)~~ **not more than twenty thousand dollars (\$20,000.00), regardless of the amount** of the estimated cost of repairs, shall be deposited therein to pay for the cost of correcting all outstanding Code violations. No party to a transfer of a rental dwelling or vacant dwelling shall authorize or accept a transfer of a dwelling without complying with this section.
 - (2) The amount to be held in escrow shall be determined by a party to the transfer after procuring written estimates from at least two (2) companies capable of performing the work and registered with the Village.—~~The amount deposited into escrow shall be the average of the two (2) estimates.~~
 - (3) If the party establishing the escrow can demonstrate to the Building Inspector that, after a good faith effort, he or she is unable to obtain two (2) written estimates, the Building Commissioner, in conjunction with the Village Engineer and any other necessary consultants, will determine the amount of the escrow.
 - (4) No person acting in the capacity of an escrow agent in any real estate transaction involving the transfer of title of a rental dwelling or vacant dwelling, or the land upon which such dwelling is located, shall disperse any funds held in escrow under this chapter unless all Code violations have been corrected, as determined by the Building Commissioner and indicated by the Building Commissioner in writing.
 - (5) Funds may be disbursed, upon written authorization from the Building Commissioner, in the following manner:
 - A. As payment in full to a contractor as each violation is corrected, provided the amount does not exceed the written estimate; and
 - B. As payment in full to a contractor as each violation is corrected when the amount due exceeds the written estimate upon the Building Commissioner’s written finding that sufficient funds remain in escrow to correct all remaining violations.
 - (6) The escrow fund shall be closed only upon written notice by the Building Commissioner to proceed with the escrow fund closure.”

Section 6. Existing Section 1343.07, “Purchaser Signature on Certificate of Inspection and Deposit in Escrow; Escrow Agent Obligations; and Vacant Dwelling Escrow Obligations,” of Chapter 1343, “Point-of-Sale Inspections,” of the Codified Ordinances of the Village of Moreland Hills, Ohio, as it existed prior to the effective date of this Ordinance is hereby repealed.

Section 7. That the actions of this Council concerning and relating to the passage of this legislation 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 meetings open to the public, in compliance with all legal requirements.

Section 8. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village, and for the further reason that this Ordinance is required to be immediately effective so that the Building Commissioner can administer and enforce the amended point-of-sale ordinance at the earliest time possible.

WHEREFORE, this Ordinance shall take effect and be in force immediately upon its passage and approval by the Mayor.

Susan Clenda, Mayor
MAYOR

PASSED: May 8, 2019

ATTEST:

Sun Anita
CLERK