

**ORDINANCE 2016 – 8**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE MUNICIPALITY OF KINGSTON, LUZERNE COUNTY, PENNSYLVANIA, A HOME RULE MUNICIPALITY, CREATING CHAPTER 180 OF THE MUNICIPAL CODE RELATING TO THE INSPECTION OF REAL PROPERTY PRIOR TO CONVEYANCING IN THE MUNICIPALITY OF KINGSTON**

**WHEREAS**, the Municipality of Kingston has heretofore enacted various ordinances relating to the enhancement of the quality of life in the Municipality of Kingston; and,

**WHEREAS**, the Municipality of Kingston has heretofore enacted a zoning ordinance, at Chapter 181 of the Municipal Code the purpose of which is to promote, protect and facilitate the public health, safety and general welfare through coordinated and practical community development, desirable density of population, prevention of blight, the provision of adequate light, air, vehicle parking and loading space, transportation, water, sewage facilities, schools, public grounds and other public requirements; and,

**WHEREAS**, the Municipality of Kingston has also provided for property maintenance enforcement through Chapter 135 of the Municipal Code; and,

**WHEREAS**, some properties within the Municipality of Kingston may not be in compliance with zoning controls or maintenance standards as required by Kingston Ordinances, but such deficiencies are not readily ascertainable to the Code Enforcement Officer without the opportunity to inspect said properties; and,

**WHEREAS**, purchasers of these properties may be unaware that certain dwellings and buildings are in violation of zoning or maintenance codes prior to their purchase of said property; and,

**WHEREAS**, the purpose of this Chapter of the Municipal Code is to provide purchasers the opportunity to review data and information concerning prospective purchases and to require that such properties be brought into compliance with applicable zoning and maintenance codes of the Municipality of Kingston.

**NOW THEREFORE**, it is ordained by the Town Council of the Municipality of Kingston as follows:

**§ 180 – 1 Title**

This Chapter shall be known and may be cited as “The Municipality of Kingston Conveyancing Inspection Ordinance”.

## § 180 – 2 Intent

The intent of this Chapter is to provide purchasers the opportunity to review the data and information contained within a building inspection report prior to entering into an agreement of sale and/or consummating a purchase. This Chapter is furthermore intended to require compliance with the version of the International Property Maintenance Code in effect as provided by Chapter 135 of the Municipal Code and the Zoning Code of the Municipality of Kingston as a prerequisite to obtaining an Occupancy Permit prior to and following a conveyance subject to this Chapter.

## § 180 – 3 Inspection of dwellings or buildings for sale

It shall be the obligation of every owner and/or agent of the owner of a dwelling or building to notify the Municipal Code Enforcement Officer and/or his/her designee upon listing, advertising or offering a dwelling or building for sale. At that time an inspection request shall be completed by the requester on a form supplied by the Municipality. This form shall include the following notation: **The inspection required by the Municipality of Kingston Conveyancing Inspection Ordinance is not intended to take the place of due diligence inspections by a prospective purchaser for wood boring insects, radon and structural issues or any other inspections that may be advisable in the purchase of a dwelling or building.**

The Municipal Code Enforcement Officer and/or his/her designee shall thereupon provide an inspection report for the dwelling or building based upon physical inspection of the dwelling or building.

## § 180 – 4 Building inspection report

- (a) The Municipal Code Enforcement Officer and/or his/her designee shall review the information contained within the inspection report within the parameters of this chapter to determine the issuance or denial of a certificate of occupancy, as provided in Section 180 – 6.
- (b) The building inspection report furnished by the Municipal Code Enforcement Officer and/or his/her designee to the owner and/or agent will contain the following:
  - (1) The street address or other appropriate description of the subject dwelling;
  - (2) A statement concerning whether the dwelling or building is single, double or multi-unit at the time of inspection prior to the conveyance.
  - (3) A statement of zoning applicable to the subject dwelling or building;
  - (4) A statement concerning the conformity or nonconformity of existing uses maintained within the dwelling or building and violations of the zoning ordinance, if any, existing at the time of inspection;
  - (5) A statement concerning variances and/or use permits issued to date which affect the dwelling or building;

(6) A statement of property maintenance code violations, if any, existing at the time of inspection.

(7) A statement of zoning code violations, if any, existing at the time of inspection.

#### **§ 180 – 5 Issuance or denial of certificate of occupancy**

- (a) The Municipal Code Enforcement Officer and/or his/her designee shall review the information contained within the inspection report. Based upon such review the Municipal Code Enforcement Officer and/or his/her designee may issue a certificate of occupancy, and deliver such certificate of occupancy to the owner and/or agent who lists, advertises or offers a dwelling or building for sale.
- (b) The certificate of occupancy shall be transferred and delivered by the owner and/or agent to the purchaser of the dwelling or building upon consummation of purchase or sale.
- (c) The Municipal Code Enforcement Officer and/or his/her designee shall provide and deliver to the owner and/or agent written notice and explanation for the denial of a certificate of occupancy for any dwelling or building listed, advertised or offered for sale.

#### **§ 180-6 Review prior to sale or purchase**

It shall be the obligation of every owner and/or agent to allow the purchaser to review the certificate of occupancy or written notice denying the certificate of occupancy as provided in § 180 – 5 (c) prior to the execution of agreement of sale and/or purchase of the dwelling or building, prior to the transfer of the dwelling or building, and prior to the exchange of any monetary sum relative to the purchase of the dwelling or building should an agreement of sale not be utilized.

#### **§ 180 – 7 Option of review by purchaser**

The purchaser shall have the right to review the information contained within the inspection report or to waive the right to review the inspection report prior to entering into an agreement of sale or consummating a purchase.

#### **§ 180 – 8 Procedure after purchase; duties of parties**

- (a) It shall be the obligation of every owner and/or agent to deliver the purchaser acknowledgement form to the purchaser prior to the transfer of the dwelling or building and prior to the exchange of any monetary sum relative to the purchase of the dwelling or building, should an agreement of sale not be utilized.
- (b) The purchaser of the dwelling shall complete the purchaser acknowledgement form and deliver it together with a copy of the recorded deed to the Municipal Code Enforcement Officer and/or his/her designee.

**§ 180 – 9 Period of notice.**

- (a) Six (6) months from the date of inspection, if a dwelling has not been sold, the conclusiveness of the inspection report must be either endorsed, as described in subsection (b), or altered by a new inspection to indicate appropriate changes. The inspection report will only indicate violations and conditions as of the date of inspection. Such inspection report does not indicate violations or corrections of such occurring between the date of inspection and the date of agreement of sale of a dwelling, or transfer of dwelling when an agreement of sale is not utilized, and/or the exchange of a monetary sum relative to the sale of a dwelling.
- (b) However, upon the request of owner and/or agent, prior to the expiration of the six-month period referred to in subsection (a), the Municipal Code Enforcement Officer and/or his/her designee may issue endorsements to the inspection report, extending its conclusiveness for up to two (2) additional three-month periods, showing any change to the information shown on the original inspection report. Each endorsement, however, shall extend the conclusiveness of the inspection report for only three (3) months.

**§ 180-10 Remediation of property denied an occupancy permit when inspected**

- (a) When a property is denied an occupancy permit as a result of a conveyancing inspection, no occupancy permit will be issued to a subsequent owner unless the property maintenance issues noted in the inspection are remediated in compliance with the Kingston Property Maintenance Code. Furthermore, no occupancy permit will be issued for any occupancy that does not comply with the Kingston Municipal Zoning Code.
- (b) When a property is denied an occupancy permit as a result of a conveyancing inspection, the current owner is nevertheless required to remediate any property maintenance issues found in such inspection in compliance with the Kingston Property Maintenance Code.
- (c) When a property is denied an occupancy permit as a result of a conveyancing inspection, the current owner is nevertheless required to remediate any zoning issues found in such inspection so as to bring the property in compliance with the Kingston Municipal Zoning Code.

**§ 180 – 11 Fees**

The following fees shall be applicable for buyer notification inspections:

- (1) Residential structures/buildings.....\$50.00
- (2) Commercial structures/buildings under 6,000 square feet.....\$150.00
- (3) Commercial structures/buildings over 6,000 square feet.....\$200.00

### **§ 180 – 12 Exceptions**

The building inspection report, set forth in § 180 – 3, shall not be required for a dwelling should any of the following conditions be applicable:

- (1) Where such dwelling is intended to be demolished and a valid demolition permit pursuant to the building code of the municipality has been obtained;
- (2) Where such dwelling is sold at a foreclosure sale or pursuant to the Real Estate Tax Sale Act of 1947, P.L. 1368, as amended, or other judicial sale pursuant to federal or state statutes;
- (3) Where such dwelling is given as a gift inter-family, i.e., husband and wife, parents and children and spouses of children;
- (4) When title to such dwellings pass by virtue of laws relating to a decedent's estate;
- (5) Where such dwelling is new and has never been occupied as a dwelling and has been inspected and approved for occupancy by a construction code inspector of the Municipality of Kingston.

### **§ 180 – 13 Disclaimer, waiver.**

Notwithstanding any other law or ordinance, the provisions of this chapter may not be waived or disclaimed by an oral or written agreement executed by any owner, agent or purchaser excepting for such waiver exercised under § 181- 7 hereof.

The inspection report shall be compiled from the records of the municipality and from an inspection of the dwelling or building. Neither the enforcement of this chapter nor the preparation and delivery of any inspection report required hereunder shall impose any liability upon the municipality, or officers or employees thereof, for any errors or omissions contained in such inspection report nor shall the municipality bear any liability not otherwise imposed by law.

The inspection required under this chapter is not intended to take the place of due diligence inspections by a prospective purchaser for wood boring insects, radon, structural issues or any other inspections that may be advisable in the purchase of a dwelling or building.

### **§ 180 – 14 Filing of appeal.**

- (a) Appeals from the findings set forth in the building inspection report must be filed in writing with the Municipal Code Enforcement Officer within twenty (20) business days after issuance of the inspection report, who will refer the appeal to the board or boards as follows:
  - (1) Property Maintenance Board of Appeals, where the conditions reported constitute violations of the applicable codes of the municipality or deal with

the suitability of any dwelling or structure, with regard to the health, safety and welfare of our citizens for continued occupancy; and/or

(2) The Zoning Hearing Board, where the findings set forth in the building inspection report relate to matters concerning the classification and the use of property under the zoning ordinance.

- (b) Any party may appeal decisions of the Property Maintenance Board of Appeals or the Zoning Hearing Board to the Court of Common Pleas of Luzerne County.

#### **§ 180 – 15 Violations and penalties.**

Any person, partnership or corporation who or which shall violate the provisions of this ordinance shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than \$500.00. In default of payment of the fine, such person, the members of such partnership or the officers of such corporation shall be liable to imprisonment for not more than 60 days. All fines collected for the violation of this ordinance shall be paid over to the governing body.

#### **§ 180 – 16 Severability**

The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this Ordinance, but the same shall remain in full force and effect, it being the intent that this Ordinance shall stand, notwithstanding the invalidity of any part thereof.

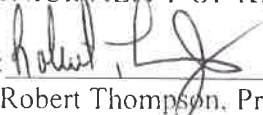
#### **§ 180-17 Effective Date**

This Ordinance shall become effective in conformity with Kingston Charter Section 213.

**INTRODUCED** at a meeting of the Town Council of the Municipality of Kingston held the 17<sup>th</sup> day of October, 2016.

**ADOPTED** at a regular meeting of the Town Council of the Municipality of Kingston, Luzerne County, Pennsylvania held the 5th day of December, 2016.

FOR THE TOWN COUNCIL OF THE  
MUNICIPALITY OF KINGSTON

By:   
Robert Thompson, President

ATTEST:

  
Julie Norton, Secretary

Date: 12/5/16

APPROVED:

  
James J. Haggerty, Mayor

Date: 12/5/16