

BOROUGH OF WEST KITTANNING
ORDINANCE NO. 01-2009

AN ORDINANCE OF THE BOROUGH OF WEST KITTANNING ESTABLISHING RULES, REGULATIONS AND PROHIBITIONS WITH RESPECT TO SANITARY SEWER LINES; PROVIDING FOR INSPECTIONS OF PRIVATE SANITARY SEWER LINES WITHIN THE BOROUGH; ESTABLISHING THOSE CONNECTIONS WHICH ARE PROHIBITED CONNECTIONS TO THE SANITARY SEWER SYSTEM; ESTABLISHING A REQUIREMENT FOR CERTIFICATION OF SANITARY SEWER STATUS PRIOR TO THE SALE OF REAL ESTATE; DESIGNATING WEST HILLS AREA WATER POLLUTION CONTROL AUTHORITY AS THE AGENT OF THE BOROUGH FOR THE IMPLEMENTATION AND ENFORCEMENT OF THIS ORDINANCE AND ALL PAST AND FUTURE ORDINANCES DEALING WITH SANITARY SEWERS WITHIN THE BOROUGH.

WHEREAS, the Borough of West Kittanning (the "Borough") has within its corporate limits sanitary sewer lines owned, operated and maintained by West Hills Area Water Pollution Control Authority (the "Authority"); and

WHEREAS, the Borough desires to eliminate ground water, storm and surface waters from entering into the Sanitary Sewer System of the Authority within the Borough corporate limits; and

WHEREAS, the Borough desires to establish Rules, Regulations and Prohibitions to eliminate the entry of ground water, storm and surface waters into said sanitary sewer system and for the inspection thereof; and

WHEREAS, the Borough desires to establish procedures for the issuance of municipal lien certifications; and

WHEREAS, the Borough desires to designate the Authority as its agent for the implementation and enforcement of this Ordinance and all Ordinances of the Borough both past and future dealing with Sanitary Sewers within the Borough;

NOW THEREFORE, in the interest of promoting the health and welfare of the residents of the Borough of West Kittanning, the Borough Council hereby ordains and enacts as follows:

SECTION 1. Definitions:

A. Person: Any person, syndicate, associate, partnership, firm, corporation, institution, agency, Authority, or other entity recognized by law as the subject of rights and duties.

B. Municipal Lien Letter: A letter written from the proper official of the Borough of West Kittanning, and/or the West Hills Area Water Pollution Control Authority regarding a particular property, stating the existence and status of any monetary amounts due to the municipality or authority and any conditions at the subject property that violate written municipal ordinances or authority rules and regulations which must be corrected.

C. Document of Certification: An official document from the proper officer of the Authority stating that there exist no known illegal ground water, storm or surface water connections or other illegal conditions which are allowing ground water, storm or surface water to enter into the sanitary sewer system on a specific property for which such certification is requested and/or which is being sold.

D. Temporary Document of Certification: A temporary document of certification from the proper officer of the Authority which expires within a stated time period or by a certain date, issued pursuant to the terms of this Ordinance.

E. Illegal Ground Water, Storm or Surface Water Connections: The entry of ground water, storm or surface water or the connection of downspouts, roof drainage, surface areaway drainage, or foundation or basement drainage into the sanitary sewer system.

F. Improved and Sewered Real Property: Real property on which any building, driveway or parking pad or other surface or sub-surface structure improvement has been constructed, installed or erected where the real property or any improvement on the real property is connected to the sanitary sewer system.

G. Cash Security: Cash, certified check or treasurer's check.

H. Sale or Transfer: The sale, transfer or assignment of any interest in real property. Provided, however, that refinancing of real property without a conveyance is not a sale or transfer under this Ordinance.

I. Private Sanitary Sewer: The sewer extending from any building connected to the public sewer system of the Authority, to the public right of way or to a Public Sanitary Sewer on the subject property, excluding the wye or other service connection pipe fitting.

J. Public Lateral Sanitary Sewer: The sanitary sewer extending from the public sanitary sewer to the Private Sanitary Sewer.

K. Sewer Drainage System: The private sanitary sewer and any connections thereto whether legal or illegal.

L. Filing Fee: The fee established herein for the Document of Certification or the Temporary Document of Certification which may from time to time to be amended by the Authority by resolution.

M. Administrative Costs: Engineering fees, legal fees and time spent by Authority employees directly related to a violation of this Ordinance.

SECTION 2. Unlawful Connections: After the effective date of this Ordinance it shall be unlawful for any person to connect any rain leader, roof drain, downspout, gutter, parking lot drain, driveway drain, interior or exterior sump, French drain, spring or other collector or source of ground water or storm or surface waters, including but not limited to the fresh air vent of the improved and sewered property's private sanitary sewer to the sanitary sewer system of the Authority or otherwise allow, permit or cause ground water, storm or surface water to enter into a Private Sanitary Sewer which in turn empties into the Sanitary Sewer System of the Authority.

SECTION 3. Appointment of Authority as agent or designee:

A. The Borough of West Kittanning hereby appoints the West Hills Area Water Pollution Control Authority as its agent or designee for the implementation and enforcement of this Ordinance and all other Ordinances of the Borough of West Kittanning dealing with or pertaining to sanitary sewers within the corporate limits of the Borough.

B. The said agent or designee is hereby authorized and empowered to make reasonable Rules and Regulations for the operation, implementation and enforcement of this Ordinance as the Authority deems necessary which shall include but not be limited to:

1. Creating necessary forms;
2. Establishing acceptable forms of security or guarantees;
3. Establishing acceptable testing methods;
4. Limiting the times of year in which temporary documents of certification are available for reasons of weather;
5. Establishing Fees

C. All Rules and Regulations issued pursuant to this Section shall be in writing and be adopted by the Authority prior to such Rules and Regulations becoming effective.

SECTION 4. Right to enter property connected to the public sanitary sewer system:

A. The Authority shall have the right to enter upon any property serviced by a private sanitary sewer connected to the public sanitary sewer system of the Authority and shall have the right to inspect all sewer drainage systems within the corporate limits of the Borough.

B. Said right of entry shall be to determine whether or not said private sewer drainage systems allow either infiltration or inflow of prohibited ground water or storm or surface water into the sanitary sewer lines of the Authority.

C. The Authority's right to inspect said sewer drainage systems shall include but not be limited to the right to:

1. dye test said sewer drainage system;
2. air test said sewer drainage system;
3. smoke test said sewer drainage system;
4. inspect surface drains and lines to determine whether or not the same are connected to or intersect with the abovesaid private sanitary sewer; or
5. use of a portable television camera or any other means as deemed necessary by the Authority.
6. observe building conditions that allow ground or storm water to enter the sanitary sewer system, including but not limited to leaking walls, sump pumps, interior drains or gutters or channels.

D. In the event that the Authority finds that said sewage drainage system is either malfunctioning, defective or illegally connected or otherwise allowing the infiltration or inflow of prohibited ground water, storm or surface water into the sanitary sewer lines of the Authority within the Borough corporate limits, the property owner shall repair or replace said defective private sanitary sewer or condition within thirty (30) days of receipt of written notice from the Authority.

E. In the event the property owner fails or refuses to perform the necessary remedial measures to repair or replace said private sanitary sewer or disconnect illegal conditions or otherwise remedy illegal conditions the Authority shall have the right to enter upon said property and perform such measures.

F. In the event the Authority is required to perform said remedial measures, the cost of said remediation shall be borne by the property owner and the Authority shall be reimbursed said costs. Such cost shall include direct costs incurred by the Authority plus reasonable administrative costs.

G. In the event the property owner fails or refuses to reimburse said costs within thirty (30) days of written notice by the Authority, the Authority shall have the right to lien said property pursuant to the Municipal Lien Law of the Commonwealth of Pennsylvania. The right to lien shall be in addition to any other remedies, penalties or fines set forth herein. Said remedies shall be considered cumulative and the Authority shall have the right to exercise any or all of said remedies as it may determine to be appropriate.

SECTION 5. Proof of Compliance on Sale or Transfer: After the effective date of this Ordinance, it shall be unlawful for any person to sell or transfer improved and sewered real property located within the Borough without having obtained and delivered to the buyer or transferee, at or prior to closing or transfer, a Document of Certification or Temporary Document of Certification for the property being sold or transferred.

SECTION 6. Application for Document of Certification: Any person selling or transferring improved and sewered real estate located within the Borough, (hereinafter "Applicant") shall make application on a form furnished by the Authority at least ten (10) days before the date of sale or transfer. The Authority or its designee will perform a dye test, smoke test, air test or televising of the sewer drainage system on the property to be sold or transferred, said smoke test to involve the use of non-toxic, non-staining smoke which is forced through the sewer system by the use of air blowers. The Authority shall have the right to approve the test as performed and/or to require that additional tests be made. The Authority shall also have the right to rely on the results of any internal televising of the main sewer completed by the Authority, its designee or its contractor. In the event that there are no illegal ground water, storm or surface water connections and the existing drainage system is sound, that is, that it does not allow the entry of ground water, storm or surface water, the Authority or its designee shall issue a Document of Certification upon the payment of a fee as established from time to time by resolution of the Authority. When an illegal ground water, storm or surface water connection or unsound sewer drainage system is discovered by means of the above mentioned testing, no Document of Certification shall be issued until the illegal connections/unsound sewer drainage system are removed/repared, the system retested and certification of such removal/repair by a plumber, contractor or other person acceptable to the Authority is received.

SECTION 7. Temporary Document of Certification: A Temporary Document of certification may be issued at the sole discretion of the Authority.

A. When a ground water or storm or surface water condition/ connection to the sanitary sewer system is discovered as abovesaid and the necessary work to remove the condition/connection would require a length of time such as to create a hardship for the seller or applicant, the seller or applicant may apply to the Authority for a Temporary Document of Certification. The seller or applicant must submit the following with the properly completed Application:

1. A bona fide executed contract with a plumber/contractor /person acceptable to the Authority requiring the plumber/contractor/person to complete the remedial work necessary to the removal of the conditions and/or connections allowing ground water, or storm or surface water to enter the sanitary sewer system and granting the Authority the right and power to enforce the contract.

2. Cash security in the amount equal to 110% of the contract described in Section 7(A)(1) above.

3. The agreement of the purchaser or transferee to be responsible for all the cost overruns related to the remedial work together with a license from the purchaser or transferee to the Authority or its agents, contractors, and/or employees, its or their agents, contractors and/or employees, to enter upon the property to complete the remedial work in case of default by the plumber/contractor/person or the applicant.

4. The filing fee as established from time to time by resolution of the Authority.

B. When the testing required herein cannot be performed because of weather conditions, the seller or applicant may apply to the Authority for a Temporary Document of Certification. The seller or applicant must submit the following with the properly completed application:

1. Cash security in the amount of \$1,000.00. This amount may be amended from time to time by resolution of the Authority
2. The written signed agreement of the purchaser or transferee to correct at the purchaser's or transferee's sole expense any ground water or storm or surface water conditions and/or connections which allow ground water, storm or surface water to enter into the sanitary sewer system as disclosed by the subsequent tests required herein, together with a license from the purchaser or transferee to the Authority and its agents, contractors, and employees to enter upon the property to conduct the required testing should the applicant fail to do so. Nothing in this sub-section shall prohibit any purchaser or transferee from requiring the applicant to reimburse the purchaser or transferee for any costs incurred in connection with such remedial work; provided, however, that the primary responsibility for the remedial work and all costs thereof shall run with the land and no such agreement shall affect the Authority's enforcement powers or excuse the current owner of the property from performance.

C. The Authority may reject the Application for Temporary Document of Certification whenever in the sole judgment of the Authority the conditions defined by this Section 6 do not exist or the submissions required by this section have not been properly made.

D. The Temporary Document of Certification shall be effective for sixty (60) days and the expiration date of the Temporary Document of Certification shall be noted on the certificate. If upon the expiration of the Temporary Document of Certification the seller or applicant has not applied for and received a Document of Certification as provided for in this Ordinance, the Cash Security shall be forfeited and the Authority may use the funds toward completion of the remedial work and/or the required testing.

E. The Application for Temporary Document of Certification Form shall be available upon request from the Authority.

SECTION 8. Municipal Lien Letters:

A. On or after the effective date of this Ordinance, all lien letters issued by the Borough of West Kittanning shall state that the lien letter is legally valid only if this Ordinance and all other Ordinances of the Borough are complied with and shall further state that the applicant must contact the West Hills Area Water Pollution Control Authority with regard to the requirements of this Ordinance.

B. A request to the West Hills Area Water Pollution Control Authority for a municipal lien letter will be issued only if all the requirements of this Ordinance have been complied with.

SECTION 9. Expiration of Document of Certification: A Document of Certification issued under this Ordinance shall be valid for a period of three (3) years from the date of issuance.

SECTION 10. Conflict with General Police Powers: Nothing in this Ordinance shall limit in any fashion whatsoever the Borough's right or that of its designee to enforce its ordinances, Rules or Regulations, or the laws of the Commonwealth. Nothing in this Ordinance shall be a defense to any citation issued by any municipal corporation or the Commonwealth pursuant to any other law or ordinance.

SECTION 11. Inspection Fee: An inspection fee in an amount to be determined from time to time by resolution of the Authority shall be paid to the Authority for any inspection services rendered by the Authority for any private sanitary sewer repair, replacement, alteration, reconnection or other service rendered by the Authority. The amount of said fee shall be amendable from time to time by resolution of the Authority.

SECTION 12. Penalties: Any person who shall fail, neglect or refuse to comply with any of the terms or provisions of this Ordinance upon conviction shall be sentenced to pay a fine of \$50.00 and in default of payment to imprisonment for a term not to exceed thirty (30) days. Each day that such person shall continue in violation of this Ordinance shall constitute a separate offense, punishable by a like fine or imprisonment hereunder upon conviction thereof.

SECTION 13. Severability: It is the express intent of the Borough Council of the Borough of West Kittanning that the provisions of this Ordinance are severable. If any section, subsection, sentence, clause or phrase of this Ordinance shall be held to be illegal, invalid or unconstitutional, the remaining provisions shall not be affected or impaired.

SECTION 14. Repeal: Any Ordinance or any part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed.

SECTION 15. Effective Date: The effective date of this Ordinance shall be sixty (60) days from the date of its enactment.

ORDAINED AND ENACTED into law this 5th day of May, 2009.

ATTEST:

WEST KITTANNING BOROUGH

Jeannette M. Englebert
Borough Secretary

Chris J. ...
President, Borough Council

I hereby certify that the foregoing Ordinance is Ordinance No. 1 of 2009, approved the 5th day of May, 2009, duly advertised and transcribed.

Jeannette M. Englebert
Secretary