

ECONOMY BOROUGH MUNICIPAL AUTHORITY

BEAVER COUNTY, PENNSYLVANIA

RESOLUTION NO. 2021-114

A RESOLUTION OF THE ECONOMY BOROUGH MUNICIPAL AUTHORITY, BEAVER COUNTY, PENNSYLVANIA, ESTABLISHING A REQUIREMENT FOR CERTIFICATION OF SANITARY SEWER STATUS PRIOR TO THE SALE OF REAL ESTATE WITHIN THE BOROUGH OF ECONOMY AND AS A CONDITION FOR THE ISSUANCE OF A MUNICIPAL LIEN LETTER; ESTABLISHING APPLICATION AND INSPECTION/TESTING FEES; APPROVING FORMS FOR SAID APPLICATIONS AND INSPECTIONS; AND ADOPTING REGULATIONS AND PROCEDURES REGARDING THE SAME.

WHEREAS, the Economy Borough Municipal Authority (the "Authority") is desirous of eliminating storm, surface and subsurface waters from entering into the sanitary sewer system of the Authority (the "Sewer System"); and

WHEREAS, the Authority is desirous of establishing certain procedures for the issuance of municipal lien letters.

NOW THEREFORE, BE IT RESOLVED by the Economy Borough Municipal Authority, Beaver County, Pennsylvania, as follows:

SECTION 101. SHORT TITLE.

This Resolution shall be known and cited as the "Smoke and Dye Test Resolution."

SECTION 102. GENERAL.

After the effective date of this Resolution, it shall be unlawful for any person to sell certain real estate within the Borough of Economy, Beaver County, Pennsylvania, on which a building or improvement exists, without first delivering, unto the purchaser, a Document of Certification or Temporary Document of Certification issued by the proper officer of the Authority, as provided in this Resolution.

SECTION 103. DEFINITIONS.

- A. Applicant/Seller: Any Person selling Real Estate located in the Borough of Economy, Beaver County, Pennsylvania.
- B. Document of Certification: A statement from the proper official or designee of the Authority stating that there are no known Illegal Storm, Surface or Subsurface Water Connection(s) into the Sewer System on the Real Estate which is being sold.
- C. Illegal Storm, Surface or Subsurface Water Connection(s): This term includes, but is not limited to, the discharge of storm, surface or subsurface water or the connection of downspouts, roof drainage, surface areaway drainage and/or foundation or basement drainage into the Sewer System.
- D. Inspector: A Person selected by the Authority to conduct inspections/tests to determine if Illegal Storm, Surface or Subsurface Water Connection(s) have been made to the Sewer System.
- E. Municipal Lien Letter: A written letter from the proper official or designee of the Authority concerning municipal liens.
- F. Person: Any person, syndicate, association, partnership, firm, corporation, institution, agency, or other entity recognized by law as the subject of rights and duties.
- G. Real Estate: Real estate located within the Borough of Economy, Beaver County, Pennsylvania, on which a building or improvement exists that is connected to the Sewer System or for which sanitary sewer service is required pursuant to the Authority's Rules and Regulations or a Borough of Economy Ordinance.
- H. Temporary Document of Certification: A temporary statement of certification from the proper official or designee of the Authority issued pursuant to the provisions of Section 106. of this Resolution.

SECTION 104. SALE OF REAL ESTATE WITHOUT DOCUMENT OF CERTIFICATION PROHIBITED.

After the effective date of this Resolution, it shall be unlawful for any Person to sell or purchase Real Estate without first delivering to the purchaser a Document of Certification or Temporary Document of Certification issued by the Authority.

SECTION 105. DOCUMENT OF CERTIFICATION APPLICATION.

The Applicant/Seller shall make application on a form furnished by the Authority at least thirty (30) days before the settlement/closing date on the sale or purchase of the Real Estate. The Applicant/Seller shall then have the Authority or its designee perform a dye test, smoke test, air test and/or any other appropriate test of the sanitary sewer drainage system on the Real Estate to be sold. In the event that any Illegal Storm, Surface or Subsurface Water Connection or malfunctioning drainage system is discovered by the means of the above mentioned testing, no Document of Certification will be issued until the Illegal Storm, Surface or Subsurface Water Connection or malfunctioning drainage system is removed or repaired, the connection or system is retested and certification of such removal or repair is made by the Authority or its designee.

SECTION 106. TEMPORARY DOCUMENT OF CERTIFICATION.

A Temporary Document of Certification may be issued, at the Authority's sole discretion, as follows:

- A. The Applicant/Seller proves that such testing cannot be performed because of weather conditions. When such is the case, the Applicant/Seller shall provide the Authority with security in the amount of Three Thousand (\$3,000.00) Dollars to guarantee that the appropriate testing and required remediation work will be performed. The Authority will cause to have performed the appropriate testing at such time as weather conditions make such testing possible. In addition, the Applicant/Seller shall provide a written acknowledgment from the purchaser of the Real Estate agreeing to correct, at the said purchaser's sole expense, any violations or defects that may be discovered as a result of subsequent testing which exceeds the security deposit as required herein.

In the event there is a balance remaining from the security deposit after the violations or defects corrections have been completed, the same shall be refunded from the Authority to the Applicant/Seller. In the event there is a shortage of funds, the purchaser shall be required to make up the difference in costs for said violations and defects corrections.

Nothing in this subsection shall prohibit any purchaser from requiring the Applicant/Seller to reimburse the purchaser for any costs incurred; provided, nevertheless, that the primary liability shall run with the land and no such agreement shall affect the Authority's enforcement powers or excuse the Applicant/Seller or purchaser from performance.

Nevertheless, in the event an application for a Temporary Document of Certification is made, the Authority, in its sole discretion, may reject or approve

such an application for a Temporary Document of Certification as it deems necessary after a preliminary visual investigation of the Real Estate in question.

- B. The Authority determines that it is unable to perform such testing prior to the scheduled settlement/closing date between the Applicant/Seller and the purchaser. When such is the case, the Applicant/Seller may apply for a Temporary Document of Certification upon the written agreement, to escrow from the Real Estate settlement/closing, the sum of Three Thousand (\$3,000.00) Dollars in favor of the Authority, which funds are to be used to guarantee that the appropriate testing and required remediation work will be performed. The Authority will cause to have performed the appropriate testing at such time as it determines testing possible. In addition, the Applicant/Seller shall provide a written acknowledgment from the purchaser of the Real Estate agreeing to correct, at the said purchaser's sole expense, any violations or defects that may be discovered as a result of such testing which exceeds the escrow deposit as required herein.

In the event there is a balance remaining from the escrow deposit after the violations or defects corrections have been completed, the same shall be refunded from the escrow agent to the Applicant/Seller. In the event there is a shortage of funds, the purchaser shall be required to make up the difference in costs for said violations and defects corrections.

Nothing in this subsection shall prohibit any purchaser from requiring the Applicant/Seller to reimburse the purchaser for any costs incurred; provided, nevertheless, that the primary liability shall run with the land and no such agreement shall affect the Authority's enforcement powers or excuse the Applicant/Seller or purchaser from performance.

Nevertheless, in the event an application for a Temporary Document of Certification is made, the Authority, in its sole discretion, may reject or approve such an application for a Temporary Document of Certification as it deems necessary after a preliminary visual investigation of the Real Estate in question.

- C. When an Illegal Storm, Surface or Subsurface Water Connection or malfunctioning drainage system has been discovered and the necessary remedial activities to correct such Illegal Storm, Surface or Subsurface Water Connection or malfunctioning drainage system would require a length of time such as to create a practical hardship for the Applicant/Seller, the Applicant/Seller may apply to the Authority for a Temporary Document of Certification, which may only be issued when the Applicant/Seller provides the Authority with all of the following:

1. a bona fide executed contract between the Applicant/Seller and a registered licensed plumber to complete the necessary remedial work with the Authority listed therein as a third party beneficiary;
2. cash security in the amount of said contract, plus twenty (20%) percent, to be posted with the Authority; and
3. an agreement by the purchaser to be responsible for all cost overruns related to the remedial work, together with a license to the Authority to enter upon the Real Estate to complete work in case of default by the registered licensed plumber contracted to do the work.

A Temporary Document of Certification issued pursuant to this Subsection C. shall expire after six (6) months from the date of issue, at which time the security shall be forfeited. The Authority may use the security to have the necessary remedial work completed.

#### SECTION 107. FEES AND COSTS.

An Application Fee of \$50.00 is hereby established, which shall be paid to the Authority at the time the Application is submitted. The initial inspection/testing fee in the amount of \$150.00 is hereby established, which shall be paid directly to the Inspector, or to the Authority, at the direction of the Authority, prior to the inspection/testing. An additional inspection/testing fee, in the amount of \$150.00, shall be paid by the Applicant/Seller directly to the Inspector, or to the Authority, at the direction of the Authority, for each inspection/testing subsequent to the initial inspection/testing.

The fees or costs payable to the Authority and the fees or costs of the Inspector to perform any inspections/testings may be amended by motion of the Board of the Authority from time to time.

#### SECTION 108. DURATION OF DOCUMENT OF CERTIFICATION.

A Document of Certification shall be valid for a period of three (3) years from the date of issuance. Real Estate may be sold during the three (3) year effective life of such Document of Certification without further inspection/testing or certification, unless there has been a substantial change to the building or improvements on the Real Estate during the three (3) year period.

#### SECTION 109. INSTANCES WHEN DOCUMENT OF CERTIFICATION NOT REQUIRED.

A Document of Certification shall not be required in the following instances:

- A. Individual apartment-type units within a single condominium building may be sold without individual certification, provided that the building in which the units are located has been certified no longer than three (3) years previous to the date of the sale of the individual condominium unit.
- B. When the Real Estate is such that connection to the Sewer System is not required by law, ordinance, resolution or the Authority's Rules and Regulations.
- C. When the Real Estate passed a system wide smoke and dye test performed by the Authority within one (1) year prior to the date of settlement on the sale and purchase of the Real Estate.

SECTION 110. RULES AND REGULATIONS.

The Authority is hereby authorized, empowered and directed to make rules and regulations for the operation and enforcement of this Resolution as deemed necessary, which shall include, but not be limited to:

- A. establishing acceptable forms of security or guarantees;
- B. approving acceptable testing methods;
- C. establishing the forms of applications, purchaser acknowledgments and plumber certifications; and
- D. limiting the times of year in which a Temporary Document of Certification is available for reasons of weather.

All rules and regulations issued pursuant to this Section shall be in writing and be approved by the Authority prior to such rules and regulations being effective.

SECTION 111. FORMS AND REGULATIONS.

The following forms and regulations and procedures regarding same, are hereby approved:

- A. REGULATIONS FOR DOCUMENT OF CERTIFICATION.
- B. APPLICATION FOR DOCUMENT OF CERTIFICATION.
- C. AGREEMENT - TEMPORARY DOCUMENT OF CERTIFICATION FOR WEATHER OR OTHER CIRCUMSTANCES.

D. AGREEMENT - TEMPORARY DOCUMENT OF CERTIFICATION FOR PRACTICAL HARDSHIP.

The Authority officials are hereby directed to commence using the forms, regulations and procedures which are part of this Resolution, upon the effective date of this Resolution.

SECTION 112. CONFLICT WITH GENERAL POLICY POWERS.

Nothing in this Resolution shall limit, in any fashion whatsoever, the Authority's right to enforce any resolution of the Authority, Rules and Regulations of the Authority, ordinance of the Borough of Economy or law or regulation of the Commonwealth of Pennsylvania, the intent being that this Resolution shall supplement already existing regulations dealing with the enforcement of sanitary sewer status within the Borough of Economy. Nothing in this Resolution shall be a defense of any citation issued by any municipal corporation or the Commonwealth of Pennsylvania pursuant to any other law or resolution.

SECTION 113. PENALTIES AND ENFORCEMENT.

- A. Any person who violates any of the provisions of this Resolution may be charged with such violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than Five Hundred Dollars (\$500.00) for each violation or, alternatively, sentenced to pay a fine or civil penalty of not more than the maximum permitted under Pennsylvania law, as the same may be from time to time amended and in effect as of the date of violation. In default of payment of imposed fines, the offender may be imprisoned for a term not to exceed ninety (90) days.
- B. Whenever any person violating any of the provisions of this Resolution is notified of such violation in writing by the Authority, each day or portion thereof during which a violation occurs or continues to occur shall constitute a separate violation.
- C. In addition to and not in lieu of the foregoing, the Authority may seek equitable and legal relief to compel compliance with this Resolution.
- D. The Authority's official or its designee shall not issue a municipal lien letter for the Real Estate unless a Document of Certification or Temporary Document of Certification has been issued for the Real Estate.

SECTION 114. EFFECTIVE DATE.

This Resolution shall be effective to Real Estate sales closings occurring on and after September 1, 2021.

SECTION 115. SEVERABILITY.

The provisions of this Resolution are severable, and if any section, sentence, clause or phrase shall be held by a court of competent jurisdiction to be illegal, invalid or unconstitutional, the remaining portions of this Resolution shall not be affected or impaired thereby.

SECTION 116. REPEALER.

Any resolution or part of any resolution conflicting with the provisions of this Resolution be and the same are hereby repealed to the extent of such conflict.

RESOLVED this 18<sup>th</sup> day of May, 2021.

ATTEST:

ECONOMY BOROUGH  
MUNICIPAL AUTHORITY



  
\_\_\_\_\_  
Secretary

By:   
\_\_\_\_\_  
Chairperson

(SEAL)