

**BOROUGH OF CALIFORNIA  
COUNTY OF WASHINGTON  
COMMONWEALTH OF PENNSYLVANIA**

**ORDINANCE NO. 549**

**AN ORDINANCE OF THE BOROUGH OF CALIFORNIA, WASHINGTON COUNTY, COMMONWEALTH OF PENNSYLVANIA, REQUIRING DYE TESTING PRIOR TO THE SALE OR PURCHASE OF REAL ESTATE TO ELIMINATE ILLEGAL STORM WATER OR SURFACE WATER CONNECTIONS INTO THE SANITARY SEWER SYSTEM AND TO ELIMINATE THE ILLEGAL DISCHARGE OF SEWAGE INTO THE SOIL AND/OR THE WATERS OF THE COMMONWEALTH OF PENNSYLVANIA BY MALFUNCTIONING, ON-LOT INDIVIDUAL SEWAGE SYSTEMS; CONTAINING A DEFINITIONS SECTION; REQUIRING A DOCUMENT OF CERTIFICATION PRIOR TO THE SALE OF ANY REAL ESTATE WITHIN THE BOROUGH; REQUIRING THE SUBMISSION OF AN APPLICATION FOR A DYE TEST; FIXING A ONE YEAR LENGTH FOR A VALID DOCUMENT OF CERTIFICATION; LISTING EXEMPTIONS FROM THE REQUIREMENT OF A DOCUMENT OF CERTIFICATION; PROVIDING FOR THE ISSUANCE OF A TEMPORARY DOCUMENT OF CERTIFICATION; EMPOWERING THE BOROUGH OR ITS DESIGNATED ENFORCEMENT OFFICER TO REGULATE THE INSTANT ORDINANCE; ALLOWING FOR THE ADJUSTMENT OF FEES BY RESOLUTION; CONTAINING A PENALTIES AND ENFORCEMENT SECTION; REPEALING PRIOR, INCONSISTENT ORDINANCES AND/OR PORTIONS OF PRIOR, INCONSISTENT ORDINANCES; INCLUDING A SAVINGS CLAUSE, AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Borough Council finds that storm water and/or surface water may be illegally deposited into the sanitary sewer system of the Borough; and,

WHEREAS, Borough Council finds that sewage may be illegally deposited into the soil and/or waters of the Commonwealth of Pennsylvania by malfunctioning on-lot individual sewage systems; and,

WHEREAS, requiring dye testing prior to the sale or purchase of real estate located in the Borough will eliminate illegal storm water and/or surface connections into the sanitary sewer system and will eliminate the illegal discharge of sewage into the soil and/or waters of the Commonwealth of Pennsylvania by malfunctioning, on-lot individual sewage systems, which will benefit the health, safety and welfare of the Borough's residents.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough of California, County of Washington, and the Commonwealth of Pennsylvania, and it is hereby ordained and enacted as follows:

## **SECTION 1. SHORT TITLE.**

This Ordinance shall be known as the Borough of California "Dye Test Ordinance."

## **SECTION 2. APPLICABILITY.**

The Borough of California Dye Test Ordinance shall be applicable to the sale of properties in the Borough that are served by either an on-lot individual sewage system or by the sanitary sewer system of the Borough.

## **SECTION 3. DEFINITIONS.**

1. Borough: The Borough of California.
2. Code: Borough of California Ordinances, as the same may be from time-to-time amended.
3. Document of Certification: An official statement from the Enforcement Officer stating that there is/are no illegal storm water or surface water connection(s), nor improper sewage flow(s) on the property to be sold, which violate any section of the Code.
4. Enforcement Officer: the Borough Zoning/Code Enforcement Officer or other agent of the Borough as may be designated by Borough Council to administer and to enforce the instant Ordinance in conjunction with the use of any and all properly credentialed plumbers.
5. Illegal Storm Water or Surface Water Connections: The discharge of basement seepage or ground water or the connection of downspouts, roof drainage or surface or areaway drainage into the sanitary sewer system.
6. Illegal Sewage Flows: The discharge of sewage into the soil and/or waters of the Commonwealth of Pennsylvania by malfunctioning, on-lot individual sewage systems.
7. Municipal Lien and Property Tax Verification: A written letter from the Borough concerning municipal liens and property taxes.
8. On-lot individual sewage system: A system of piping, tanks or other facilities serving a single lot and collecting and disposing of sewage in whole or in part into the soil or into any waters of the Commonwealth of Pennsylvania or by means of conveyance to another site for final disposal.
9. Person: Any person, syndicate, associate, partnership, firm, corporation, institution, agency, authority or other entity recognized by the laws of the Borough of California and the Commonwealth of Pennsylvania as the subject of rights and duties.
10. Sanitary Sewer System: The public system that provides sewage for the Borough.

11. Temporary Document of Certification: A temporary statement of certification from the Enforcement Officer issued pursuant to the terms of this Ordinance.

12. WCSC: The Washington County Sewage Council.

**SECTION 4. DESIGNATION OF ENFORCEMENT OFFICER FOR ON-LOT INDIVIDUAL SEWAGE SYSTEMS.**

The Borough Council hereby designates the Washington County Sewage Council (WCSC) as its Enforcement Officer for the purposes of the within Ordinance as said Ordinance relates to on-lot individual sewage systems unless and until a subsequent Enforcement Officer is appointed.

**SECTION 5. DESIGNATION OF ENFORCEMENT OFFICER FOR SANITARY SEWER SYSTEM.**

The Borough Council hereby designates its Zoning/Code Enforcement Officer as its Enforcement Officer for the purposes of the within Ordinance as said Ordinance relates to the sanitary sewer system unless and until a subsequent Enforcement Officer is appointed.

**SECTION 6. SALE OF REAL ESTATE WITHOUT DOCUMENT OF CERTIFICATION PROHIBITED.**

After the effective date of this Ordinance, it shall be unlawful for any person to sell or to purchase real estate within the Borough on which a building or improvement exists without first delivering to the purchaser(s) a Document of Certification or a Temporary Document of Certification issued by the appropriate Enforcement Officer.

**SECTION 7. DOCUMENT OF CERTIFICATION APPLICATION.**

1. Any person selling real estate as defined in Section 6 of this Ordinance that is located within the Borough, (hereinafter referred to as "applicant"), shall make application on a form furnished by the appropriate Enforcement Officer at least twenty-one (21) days before the date of closing on the sale. The applicant shall then cause to have performed a dye test on the property to be sold. All dye tests shall be performed by an inspector appointed by the Enforcement Officer (hereinafter referred to as "inspector").

2. The inspection fee and any application fee shall be an amount set by the Enforcement Officer. The inspection fee and any application fee shall be paid to the Enforcement Officer at the time of making the application referred to in this Section.

3. The inspector shall complete the appropriate portions on the inspection form and certify that the property has been dye tested and certify the results of such test. In the event that there are no illegal storm water or surface water connection(s) or illegal sewage flow(s,) the Enforcement Officer shall issue a Document of Certification upon payment of such fee as set by the Enforcement Officer.

4. When an illegal storm water or surface water connection(s) or sewage flow(s) is/are discovered by means of the above-referred dye test, no Document of Certification will be issued until the illegal connection(s) or flow(s) is/are removed and/or remedied and certification of such removal and/or remedy by an inspector is received. An additional inspection fee shall be paid by the applicant for each additional inspection subsequent to the first inspection referred to in Section 7(1).

#### **SECTION 8. DURATION OF DOCUMENT OF CERTIFICATION.**

A Document of Certification shall be valid for a period of one (1) year from the date of issuance. Real estate may be sold during the one (1) year effective life of the Document of Certification without further dye testing or certification.

#### **SECTION 9. INSTANCES WHEN DOCUMENT OF CERTIFICATION NOT REQUIRED.**

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

1. When property is refinanced, but no conveyance takes place.
2. When an improvement to real estate has been recently constructed in accordance with a valid building permit and has been inspected by the Borough and/or Enforcement Officer and has not been formerly occupied but is now occupied within one (1) year of the issuance of the building permit. If such property is sold after one (1) year of the date of the Certificate of Occupancy, or the inspections referred to in this subsection, compliance with this Ordinance is mandatory.
3. 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 one (1) year previous to the date of the sale of the individual condominium unit.
4. When the real estate is such that an on-lot individual sewage system or a connection to the sanitary sewer system is not required by law or ordinance.

#### **SECTION 10. TEMPORARY DOCUMENT OF CERTIFICATION.**

A temporary Document of Certification may be issued by the Enforcement Officer, at his/her sole discretion, when, either:

1. The applicant proves that dye testing cannot be performed because of weather conditions. When such is the case, the applicant shall provide the Borough and/or the Enforcement Officer with security in such an amount as the Borough and/or the Enforcement Officer shall establish to guarantee that the dye test will be performed. The applicant will cause to have the dye test performed within fourteen (14) days of written notification from the

Enforcement Officer which shall be given at such time as weather conditions make the dye test possible. In addition, the applicant shall provide a signed, written acknowledgment from the purchaser agreeing to correct, at purchaser's sole cost and expense, any violations that may be discovered as a result of subsequent dye tests. Nothing in this subsection shall prohibit any purchaser from requiring the applicant to reimburse the purchaser for any costs incurred; provided, however, that primary liability shall run with the land and no such agreement shall affect the Borough's and/or the Enforcement Officer's enforcement powers or excuse the current owner from compliance with this Ordinance; or

2. When an illegal storm or surface water connection or sewage flow is discovered and the necessary remedial activities to correct such would require a length of time such as to create a practical hardship for the applicant, applicant may apply to the Enforcement Officer for a Temporary Document of Certification which may only be issued when the applicant provides the Borough and/or the Enforcement Officer with all of the following: (i) a true and correct copy of an executed contract between the applicant and a contractor to complete the necessary remedial work with the Borough and/or the Enforcement Officer listed therein as a third-party beneficiary; (ii) cash security in the amount of said contract is posted with the Borough and/or the Enforcement Officer, and (iii) a written agreement by the purchaser to be responsible for all cost overruns and extras related to the remedial work together with a written license to enter upon the property to complete work in case of default of the contractor referred to above. The Enforcement Officer shall determine when such Temporary Document of Certification shall expire. Upon expiration, the security shall be forfeited and the Borough and/or the Enforcement Officer may use the security to have the necessary remedial work completed.

#### **SECTION 11. MUNICIPAL LIEN AND TAX CERTIFICATION LETTERS.**

1. A request for a Municipal Lien and/or Tax Certification Letter must be accompanied by a valid Document of Certification issued pursuant to this Ordinance and the payment of the required fees.

2. Where requested by a property owner or his agent and subject to time availability as determined solely by the Enforcement Officer, the Borough may issue a Municipal Lien and Tax Certification Letter on two (2) days' notice upon the payment of an expedition fee in addition to the fees set forth above. The amount of the expedition fee shall be established by Resolution of Borough Council.

#### **SECTION 12. REGULATIONS.**

The Borough, by and through the Enforcement Officer, is hereby empowered to undertake the duties imposed by this Ordinance, including, but not limited to, the following:

1. Establishing acceptable forms of security or guarantee.
2. Establishing the form of (i) applications, (ii) purchaser acknowledgements, and (iii) inspector certifications.

3. Limiting the times of year in which the Temporary Document of Certification is available for reasons of weather.

### **SECTION 13. ADJUSTMENT OF FEES BY RESOLUTION.**

The Borough may, by Resolution, change, from time-to-time, the Municipal Lien fees, Tax Certification Letter fees, expedition of Municipal Lien and/or Tax Certification Letter fees and any other applicable fees authorized in this Ordinance.

### **SECTION 14. CONFLICT WITH GENERAL POLICE POWERS.**

Nothing in this Ordinance shall limit in any fashion whatsoever the Borough's right to enforce its Ordinances or the laws of the Commonwealth of Pennsylvania. Nothing in this Ordinance shall be a defense to any citation issued by any municipal corporation or by the Commonwealth of Pennsylvania pursuant to any other law or Ordinance.

### **SECTION 15. PENALTIES AND ENFORCEMENT.**

1. A person who violates any of the provisions of this Ordinance may be charged with such violation, and, upon conviction thereof, shall be sentenced to pay a fine of not less than One Hundred Dollars (\$100.00) and not more than Seven Hundred, Fifty Dollars (\$750.00) for each violation, or, alternatively, shall be sentenced to pay a fine 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 conviction. In default of payment of any imposed fine(s), the offender may be imprisoned for a term not to exceed ninety (90) days in the Washington County Correctional Facility.

2. Whenever any person or entity violating any of the provisions of this Ordinance is notified of such violation, in writing, by the Borough and/or Enforcement Officer, each day, or portion thereof, a violation occurs or continues to occur shall constitute a separate violation.

3. In addition to and not in lieu of the foregoing, the Borough and/or the Enforcement Officer may seek equitable and legal relief to compel compliance with this Ordinance. If a court of competent jurisdiction grants the Borough's and/or the Enforcement Officer's request for equitable and/or legal relief, the person(s) against who such relief was granted, shall be responsible for any and all court costs, attorney's fees and/or expenses incurred by the Borough and/or the Enforcement Officer in seeking said relief and/or compliance.

### **SECTION 16. REPEALER.**

Any and all prior Ordinances and/or any and all portions of prior Ordinances that are in conflict with this Ordinance are hereby repealed to the extent of such conflict. The remaining Ordinances and/or portions of prior Ordinances, not modified herein, shall remain the same.

**SECTION 17. SAVINGS CLAUSE.**

Should any section of this Ordinance be, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

The Borough Council hereby declares that it would have enacted this Ordinance, and each section thereof, irrespective of the fact that any one or more sections are subsequently declared unconstitutional.

**SECTION 18. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon adoption by Borough Council.

DULY presented and adopted at a meeting of the Borough Council of the Borough of California, Washington County, Commonwealth of Pennsylvania, this 9 day of April, 2015.

ATTEST:

BOROUGH OF CALIFORNIA

*Samuel J. Sulko*  
Borough Secretary

By: *Robert J. Affonso*  
President of Council

EXAMINED AND APPROVED by me this \_\_\_ day of \_\_\_\_\_, 2015.

BOROUGH OF CALIFORNIA

By: \_\_\_\_\_  
Mayor