

UPPER YODER TOWNSHIP, CAMBRIA COUNTY

ORDINANCE NO. 265.

AN ORDINANCE OF THE TOWNSHIP OF UPPER YODER, CAMBRIA COUNTY, PENNSYLVANIA, ESTABLISHING REQUIREMENTS FOR THE INSPECTION AND CERTIFICATION OF SANITARY SEWERS AT THE TIME OF SALE, TRANSFER, ASSIGNMENT, MORTGAGE OR REFINANCING, OF ANY REAL PROPERTY LOCATED WITHIN THE TOWNSHIP OF UPPER YODER OR THE UPPER YODER TOWNSHIP AUTHORITY SANITARY SEWER COLLECTION SYSTEM, PROVIDING CONDITIONS FOR THE ISSUANCE OF MUNICIPAL LIEN LETTERS AND ESTABLISHING FEES AND PROCEDURES FOR THE ISSUANCE OF SUCH CERTIFICATES AND LIEN LETTERS AND PROVIDING PENALTIES FOR THE FAILURE TO COMPLY WITH SAID PROCEDURES .

WHEREAS, the Township of Upper Yoder (the "Township") believes the elimination of surface and storm water inflow to the Sanitary Sewer Collection System to be necessary to the health and welfare of its residents; and

WHEREAS, the Township, as a result of excessive flows monitored in the sanitary sewer collection system and after rainfall events, has reason to believe that certain residential and commercial properties within the Township Sanitary Sewer Collection System have storm water or surface water connections to the sanitary sewer system which contribute to Sanitary Sewer Overflow (SSO); and

WHEREAS, in the interest of promoting the health and welfare of its residents, the Township desires to institute and enforce a sewer use ordinance require dye testing of all structures located on property within the Township's Sanitary Sewer Collection System to determine whether surface and storm water drains to the sanitary sewer collection system.

NOW, THEREFORE, the Board of Supervisors of Upper Yoder Township hereby ordains and enacts as follows:

Section 1. Definitions.

(a) Applicant: A person applying for a Certificate of Compliance or Temporary Certificate of Compliance.

(b) Cash Security: Cash, certified check, or treasurer's check.

(c) Dye Test: Any commonly accepted method of testing and inspecting whereby dye (which is a colored innocuous substance) is introduced into the storm, surface or subsurface water connection systems and downspouts of structures or improvements to real property to determine if surface storm water is entering into the Sanitary Sewer Collection System.

(d) **Improved and Connected Real Property:** Real property on which any building, driveway or parking pad, other surface or subsurface structure or improvement has been constructed, installed or erected, where the real property or any improvement on the real property is connected to the Township Sanitary Sewer Collection System.

(e) **Ordinance Compliance Officer:** Unless the Township by resolution provides otherwise, the Upper Yoder Township Authority, or its properly authorized officers, agents, engineers, or employees, shall be collectively designated as Ordinance Compliance Officer under this Ordinance.

(f) **Person:** Any natural person, association, partnership, corporation, syndicate, institution, agency, authority, or other entity or the chief executive officer or managing partner or agent of any entity recognized by law as the subject of rights and duties.

(g) **Sanitary Sewer Collection System:** The sanitary sewer lines and related facilities maintained and operated by the Township or the Upper Yoder Township Authority, as presently or hereafter constituted, which is its designated sewer service provider.

(h) **Sell or Transfer:** The sale, transfer, or assignment of any interest in real property.

(i) **Mortgage:** The transfer, assignment, pledge or hypothecation of any interest in real property to a lender for value which is evidenced by a mortgage, deed of trust, or other security agreement.

(j) **Surface Storm Water:** Surface water and ground water, including but not limited to roof and driveway drainage, basement seepage, and surface and open area drainage.

(k) **Certificate of Compliance:** An official statement from the Ordinance Compliance Officer stating that there are no unlawful connections to the sanitary sewer lines on the real property to be sold, transferred or mortgaged.

Section 2. Unlawful Connections. In addition to unlawful sewer connections as defined by the Upper Yoder Township Authority Rules and Regulations as the same may be amended from time to time and Township *Ordinance No. 54, enacted March, 8, 1962*, which are incorporated herein by reference, 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 surface storm water, including but not limited to the fresh air vent of the improved and connected property's sanitary sewer, to the sanitary sewer system.

Section 3. Repair of Private Sewer Facilities. Persons owning property within the **Township Sanitary Sewer Collection System** are required to maintain all private sanitary sewer laterals and sanitary sewer service connections in good repair.

Section 4. Dye Testing by Municipality. The Ordinance Compliance Officer, or other persons designated by the Township by resolution from time to time, is authorized to initiate dye testing or other testing or inspection within the Township Sanitary Sewer Collection System for purposes of discovering or locating the inflow of surface storm water to the sanitary sewer system or other unlawful connections. The Ordinance Compliance Officers are authorized to perform the dye testing or other testing or inspection. Persons owning property within the Township Sanitary Sewer Collection System are required to grant access to the Ordinance Compliance Officer and/or the dye testing contractor and to permit dye testing or other testing or inspection. It is unlawful for any person to refuse access to property for purposes of dye testing or other testing or inspection.

Section 5. Notices to Property Owners. In the event the Ordinance Compliance Officer identifies any illegal connections or leaking, deteriorating or poorly constructed private sanitary sewer lateral and/or sanitary sewer service connections, the Ordinance Compliance Officer shall give written notice of same to the property owner that such illegal connections be eliminated and/or services connections be, at the property owner's expense, repaired, replaced, or rehabilitated within thirty (30) days of the date of the notice. If the condition does not create a health hazard, the Ordinance Compliance Officer, upon request of the property owner, may extend the deadline to sixty (60) days from the date of the notice.

Section 6. Proof of Compliance on Sale, Transfer, or Mortgage Financing. After the effective date of this Ordinance, it shall be unlawful for any person to mortgage, sell or transfer any improved and connected real property located within the Township Sewer Collection System without having obtained and in the case of a sale without having delivered to the buyer or transferee, at or prior to closing or transfer, a Certificate of Compliance or Temporary Certificate of Compliance for the property being sold or transferred.

Section 7. Application for Certificate of Compliance.

(a) At least 21 days prior to the date of mortgage settlement, closing or transfer of any improved real property located within the Township Sanitary Sewer Collection System, the owner, seller, transferor, transferee or its agent shall submit to the Ordinance Compliance Officer an Application for Certificate of Compliance, completed as required by Section 7(b) below. The Certificate of Compliance form shall be available upon request from the Ordinance Compliance Officer's Secretary. The fee for filing the completed Application for Certificate of Compliance shall be established by the Township from time to time by resolution.

(b) Prior to the mortgage financing, sale or transfer of any improved and connected real property located within the Township Sewer Collection System, the owner, seller or transferor shall have a dye test of the property done by the Ordinance Compliance Officer. However in the event the Ordinance Compliance Officer is unable, the dye test may be performed at the applicant's sole expense by such other qualified contractor approved in advance by the Ordinance Compliance Officer to perform such tests. Upon completion of the dye test, the person who performed the test shall complete the appropriate section of the Application for Certificate of Compliance, confirming that the property has been dye tested and certifying the results of the test.

Section 8. Issuance of Certificate of Compliance.

(a) If the Application for Certificate of Compliance, properly completed and filed with the Ordinance Compliance Officer with the designated filing fee, indicates that there are no unlawful connections to the sanitary sewer collection system, then the Ordinance Compliance Officer shall issue the Certificate of Compliance within ten (10) days of application therefore.

(b) If the dye test reveals the existence of one or more unlawful connections to the sanitary sewer collection system, the Ordinance Compliance Officer shall not issue the Certificate of Compliance until the unlawful connections have been removed and a qualified contractor approved in advance by the Compliance Officer, has certified to the satisfaction of the Ordinance Compliance Officer that there is no longer any unlawful connection to the sanitary sewer collection system from the property to be mortgaged, sold or transferred.

Section 9. Temporary Certificate of Compliance.

(a) When a surface storm water or other unlawful connection to the sanitary sewer system is discovered and the necessary work to remove the connection would require a length of time such as to create a hardship for the owner, seller or applicant, the owner, seller, or applicant may apply to the Ordinance Compliance Officer for a Temporary Certificate of Compliance. The owner, seller, or applicant must submit the following with the properly completed Application:

(i) A bona fide executed contract with a registered and licensed plumber, or other qualified contractor approved in advance by the Compliance Officer, requiring the plumber or qualified contractor to complete the remedial work necessary to the removal of the connections of surface storm water to the sanitary collection sewer system and granting the Township or the Upper Yoder Township Authority the right and power to enforce the contract.

(ii) Cash security in an amount equal to one hundred ten (110%) percent of the contract described in Subsection (a) (i) above which shall be posted with and forfeited to the Ordinance Compliance Officer in the event of default.

(iii) The agreement of the owner, purchaser or transferee clearly acknowledging responsibility for all cost overruns related to the remedial work, together with a license from the owner, purchaser or transferee to the Ordinance Compliance Officer, its agents, contractors, and employees, to enter upon the property to complete the remedial work in case of default by the contractor or the applicant.

(iv) The filing fee for the Application shall be established by the Township of Upper Yoder from time to time by resolution.

(b) When dye testing cannot be performed because of weather conditions, the applicant may apply to the Ordinance Compliance Officer for a Temporary Certificate of Compliance. The seller or applicant must submit the following with the properly completed Application:

(i) Cash security in the amount of one thousand dollars (\$1,000).

(ii) The written, signed agreement of the applicant whether it is owner, purchaser, or transferee to correct, at the owner's, purchaser's or transferee's sole expense, any surface storm water or other unlawful connections to the sanitary sewer system disclosed by the subsequent dye test, together with a license from the owner, purchaser or transferee to the Ordinance Compliance Officer, its agents, contractors, and employees, to enter upon the property to conduct the dye testing. Nothing in this subsection 9(b) 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 primary responsibility for the remedial work and all costs thereof shall run with the land, and no such agreement shall affect the Township's or the Upper Yoder Township Authority's enforcement powers or excuse the current owner of the property from performance.

(iii) The filing fee for the Temporary Certificate as established by the Township Board of Supervisors from time to time by resolution.

(c) The Ordinance Compliance Officer may reject the Application for Temporary Certificate of Compliance whenever, in its sole judgment, the conditions defined by this Section 6 do not exist or the submissions required by this Section 6 have not been made.

(d) The Temporary Certificate of Compliance shall be effective for sixty (60) days, and the expiration date of the Temporary Certificate of Compliance shall be noted on the Certificate. If, upon the expiration of the Temporary Certificate of Compliance, the applicant owner, purchaser or transferee has not applied for and received a Certificate of Compliance, as provided for in Sections 4 and 5 of this Ordinance, the cash security shall be forfeited, and the Ordinance Compliance Officer may use the funds to complete the remedial work for the unlawful connections. However, in the event

the cash security is insufficient to complete the remedial work satisfactorily, the owner in the case of a mortgage refinancing or the purchaser or transferee shall be responsible for the payment of any deficiency. At all times, primary responsibility for compliance with this Ordinance shall run with the land, and nothing shall affect the Township's or Ordinance Compliance Officers' enforcement powers or shall excuse the owner, seller, purchaser, or transferee from performance hereunder.

(e) The Application for Temporary Certificate of Compliance form shall be available upon request from the Ordinance Compliance Officer.

Section 10. Municipal Lien and Tax Verification Letters. A request to the Township and Upper Yoder Township Authority for a municipal lien letter or tax verification letter must be accompanied by a valid Certificate of Compliance or Temporary Certificate of Compliance and by the appropriate fee, which shall be established by the Township Board of Supervisors from time to time by resolution. The Municipality shall issue the municipal lien letter or tax verification letter within seven (7) days of receipt of the appropriately documented request and the applicable fee.

Section 11. Expiration of Certificate of Compliance. A Certificate of Compliance issued under this Ordinance shall be valid for a period of five (5) years from the date of issuance. However, for those improved and connected real properties within the Sanitary Sewer Collection System which have been inspected by the Upper Yoder Township Authority for unlawful connections during calendar year 2008 and for which no violations were found, a Certificate of Compliance shall be issued by the Ordinance Compliance Officer which shall be valid for a period of five (5) years; however, any sale, transfer or mortgage financing taking place after the five (5) year period shall be subject to the provisions of this Ordinance, and a new Certificate of Compliance shall be required.

Section 12. Regulations. The Ordinance Compliance Officer is hereby empowered to make reasonable rules and regulations for the operation and enforcement of this Ordinance, including but not limited to: establishing the form of applications, acknowledgments and certifications; and limiting the time of year in which Temporary Certificate of Compliance is available for reasons of weather.

Section 13. Conflict with General Police Powers. Nothing in this Ordinance shall limit in any fashion whatsoever the Township's right to enforce its ordinances or the laws of the Commonwealth. Nothing in this Ordinance shall be a defense to any citation issued by any other municipal corporation or the Commonwealth pursuant to any other law or ordinance.

Section 14. Penalties. Any person, who shall fail, neglect or refuse to comply with any of the terms or provisions of this Ordinance, shall be subject to a penalty of not more than Six Hundred Dollars (\$600.00) for each violation. Once a person is notified of a violation of this Ordinance, each day that such violation occurs or continues shall constitute a separate violation. In addition to and not in lieu of the foregoing, the Upper

Yoder Township, Upper Yoder Township Authority, and the Ordinance Compliance Officer may seek equitable relief to compel compliance with this Ordinance.

Section 15. Severability. In the event that any section or provision of this Ordinance is declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

Section 16. Repealer. Any other Ordinance provisions or regulation of the Municipality inconsistent with any of the provisions of this Ordinance is hereby repealed to the extent of the inconsistency only.

Section 17. Effective Date. This Ordinance shall take effect on December 31, 2008.

ORDAINED and ENACTED this 18th day of December, 2009, by the Governing Body of the Township of Upper Yoder in lawful session duly assembled.

By: Ray M. Shaffer
Chairman

ATTEST:

Mary Kay Maher
Secretary

(Seal)

**APPLICATION FOR
CERTIFICATE OF SEWAGE COMPLIANCE
UPPER YODER TOWNSHIP**

1. Name of Applicant (Seller/Mortgagor): _____

Applicant's Address: _____

(Telephone #)

(Fax #)

(Email Address)

2. Location of Property being Sold: _____

(911 Address)

3. Current use of building: _____

Applicant hereby represents that he/she is aware of no unlawful connections nor any other uncorrected defects in their sanitary sewage connection, and,

I will have the required inspection performed in the presence of a municipal inspector by the following Plumber or approved Contractor:

(List name address and telephone of Plumber or approved Contractor, if applicable)

Statements made herein are true and correct to the best of my knowledge, information and belief. I further acknowledge and understand that statements herein are made subject to the penalties of 18 Pa. C. S. A. Section 4904, relating to unsworn falsifications to authorities.

Date: _____

Signature of Applicant (must be signed by property owner)

Application Fee \$_____ (check payable to township must accompany application)

CONTRACTOR CERTIFICATION (attach additional pages if necessary)

1) I have conducted the following testing on the property listed above on _____, 200__:

☐ dye testing of down spouts, (location & result): _____

☐ smoke testing of sewer lateral (result): _____

☐ televising of lines (location & result): _____

Note: Smoke testing and televising are only required where there is reason to believe dye testing is not providing an accurate indication of lack or presence of unlawful connections or system defects.

2) I have found the following problems requiring correction:

☐ none

☐ lacking inspection port (to be corrected if mandatory in municipality)

☐ other, explain _____

☐ All identified problems have been corrected as of _____, 200__, or,

☐ The cost of fixing any unresolved unlawful connections or defects as of this date is estimated at \$_____

Statements made herein are true and correct to the best of my knowledge, information and belief. I further acknowledge and understand that statements herein are made subject to the penalties of 18 Pa. C. S. A. Section 4904, relating to unsworn falsifications to authorities.

Date: _____
(Must be latest date on form)

Signature of Plumber or Approved Contractor

Print name:

Testing witnessed and approved by municipal representative: _____ (seal)

date: _____ Print Name: _____

(A copy of this form shall be provided to Purchaser by Seller, if items have not been corrected, escrow of sufficient funds must be demonstrated)