

Placed on first reading and referred
to Housing 9/4/18; Second reading
9/17/18

ORDINANCE NO. 39-18

BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, amending various sections of Chapter 1306, Property Maintenance and Safety Code, and Section 1173.01, Certificate of Use and Occupancy Required, of the Codified Ordinances of the City of Lakewood in order to update the code so as to eliminate the threat of warrantless searches from the Code.

WHEREAS, various provisions within Chapters 1306 and 1173 of the Code stand to be amended in order to clarify that the City will not penalize persons criminally or administratively for refusing to permit warrantless or non-emergency searches in the inspection of structures; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this ordinance is an emergency measure and that it shall take effect immediately, because of the advent of litigation across Ohio on the subjects covered herein; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Section 1306.45, Issuance of License, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

1306.45 ISSUANCE OF LICENSE.

The Building Commissioner shall issue the license applied for if the building and the uses to which it is intended to be put are found to comply in all respects with this Code and all other laws and ordinances. Such license shall be posted at the main entrance of the building for which it is issued. The Building Official may inspect and require compliance in all respects with this Code and all other laws or ordinances prior to the issuance of the Housing License.

shall be repealed, and new Section 1306.45, Issuance of License, shall be enacted to read as follows:

1306.45 ISSUANCE OF LICENSE.

The Building Commissioner shall issue the license applied for if the building and the uses to which it is intended to be put are found to comply in all respects with this Code and all other laws and ordinances. ~~Such license shall be posted at the main entrance of the building for which it is issued. The Building Official may inspect and require compliance in all respects with this Code and all other laws or ordinances prior to the issuance of the Housing License.~~

Section 2. Section 1306.49, Inspection, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

1306.49 INSPECTION.

(a) The Building Commissioner is hereby authorized to make or cause to be made inspections to determine the condition of dwellings, dwelling units, occupiable structures and premises located within the City in order that he may perform his duty of safeguarding the health and safety of the occupants of dwelling units and occupiable structures and of the general public and to determine whether they conform to the provisions of this Code. Such inspections may also be made whenever the Building Commissioner has reasonable cause to believe that a violation of this Code exists therein or thereon.

(b) The Building Commissioner is authorized to revoke the housing license of any property to which the Building Commissioner is denied access to make an inspection.

shall be repealed, and new Section 1306.49, Inspection, shall be enacted to read as follows:

1306.49 INSPECTION.

~~(a)~~ The Building Commissioner is hereby authorized to make or cause to be made inspections to determine the condition of dwellings, dwelling units, occupiable structures and premises located within the City in order that he may perform his duty of safeguarding the health and safety of the occupants of dwelling units and occupiable structures and of the general public and to determine whether they conform to the provisions of this Code. Such inspections may also be made whenever the Building Commissioner has reasonable cause to believe that a violation of this Code exists therein or thereon.

~~(b) The Building Commissioner is authorized to revoke the housing license of any property to which the Building Commissioner is denied access to make an inspection.~~

Section 3. Section 1306.50, Right of Entry, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

1306.50 RIGHT OF ENTRY.

(a) For the purpose of making such inspections, the Building Commissioner, upon presentation of proper credentials is authorized to enter, examine and survey at all reasonable times all dwelling, dwelling units, rooming units, occupiable structures, structures and premises provided for in this Code. The owner and occupant of every such dwelling, dwelling unit, rooming unit, occupiable structure and premises and the person in charge thereof shall give such official free access to such dwelling, dwelling unit, rooming unit, occupiable structure and premises at all reasonable times for the purpose of such inspection, examination and survey.

(b) Every occupant of a dwelling, dwelling unit or occupiable structure shall give the owner thereof or his agents and employees access to any part of such dwelling, dwelling unit, occupiable structure or their premises at all reasonable

times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this Code.

(c) Except in emergency situations, no penalty under the penalty provisions of this Code shall apply against any owner who refuses the right of entry hereunder until a search warrant is obtained.

shall be repealed, and new Section 1306.50, Right of Entry; Warrants, shall be enacted to read as follows:

1306.50 RIGHT OF ENTRY; WARRANTS.

(a) For the purpose of making ~~such any~~ inspections required or permitted under this Chapter, the Building Commissioner, upon presentation of proper credentials is authorized to enter, examine and survey at all reasonable times all dwelling, dwelling units, rooming units, occupiable structures, structures and premises provided for in this Code. The owner and occupant of every such dwelling, dwelling unit, rooming unit, occupiable structure and premises and the person in charge thereof shall give such official free access to such dwelling, dwelling unit, rooming unit, occupiable structure and premises at all reasonable times for the purpose of such inspection, examination and survey.

(b) Every occupant of a dwelling, dwelling unit or occupiable structure shall give the owner thereof or his agents and employees access to any part of such dwelling, dwelling unit, occupiable structure or their premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this Code.

(c) (1) Except as may be permitted by law in exigent or emergency situations, no penalty under the penalty provisions of this Code, or adverse administrative action permitted under this Code, shall apply or be made against any owner or other party who refuses the right of entry granted to the Building Commissioner hereunder until a search warrant is obtained.

(2) If the owner or occupant does not consent to the proposed inspection, the Building Commissioner may appear before any judge in a court of competent jurisdiction and seek an administrative search warrant to allow an inspection. Any such application shall be made within ten (10) calendar days after the non-consent. The application for the warrant shall specify the basis upon which the warrant is being sought and shall include a statement that the inspection will be limited to a determination whether there are violations of the code provisions identified in this Code. The court may consider any of the following factors along with such other matters as it deems pertinent in its decision as to whether a warrant shall be issued:

- A. eyewitness account of violation;
- B. citizen complaints;
- C. tenant complaints;
- D. plain view violations;
- E. violations apparent from city records;
- F. property deterioration;
- G. age of property;
- H. nature of alleged violation;
- I. condition of similar properties in the area;
- J. documented violations on similar properties in the area;
- K. passage of time since last inspection; and
- L. previous violations on the property.

(d) If a warrant is issued, no owner or occupant shall fail or neglect, upon presentation of a warrant, to properly permit entry therein by the Building Commissioner for the purpose of conducting a inspection and examination pursuant to this section and consistent with the terms of the warrant. If the court de-

clines to issue a warrant, or if no warrant is sought, the inspection may still take place but the scope thereof shall be limited to such areas as are in plain view.

Section 4. Section 1306.53, Furnishing Certificate to Purchaser of Multiple Dwellings/Certificate to Purchaser of One or More Rental Units, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

1306.53 FURNISHING CERTIFICATE TO PURCHASER OF MULTIPLE DWELLINGS/CERTIFICATE TO PURCHASER OF ONE OR MORE RENTAL UNITS.

(a) Whoever sells, conveys, leases or otherwise transfer an interest in real property, which has situated thereon a rental dwelling structure, shall secure a Certificate of Occupancy from the Building Commissioner and shall furnish said Certificate to the purchaser, lessee or transferee prior to the execution of the land contract or the delivery of the deed, lease or conveyance. Whoever sells, conveys, or otherwise transfers an interest in any structure, which has situated thereon any rental dwelling unit or dwelling unit that has been rented or leased to any person within the 24 months preceding the conveyance or transfer, shall secure a Certificate of Occupancy from the Building Commissioner and shall furnish said Certificate to the purchaser or transferee prior to the recording of the land contract or the delivery of the deed or conveyance, whichever shall first occur.

(b) This section shall have no application to lawful one and two family structures or condominium units occupied by the owner as the owner's principal residence at the time of the conveyance or transfer and for the 24 months preceding the conveyance or transfer.

(c) Whoever fails to comply with the provisions of this Section shall be guilty of a misdemeanor of the first degree.

shall be repealed.

Section 5. Section 1306.54, Duties of Escrow Agent, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

1306.54 DUTIES OF ESCROW AGENT.

No person, firm or corporation acting in the capacity of an escrow agent in any real estate transaction involving the sale of any rental dwelling structure or dwellings requiring a housing license pursuant to Section 1306.43 shall transfer title or distribute funds until there has been deposited in escrow an acknowledgment from the buyer of the receipt of a copy of the Certificate of Occupancy required by Section 1306.53, housing license required by Section 1306.43, and the provisions of Section 1306.53 have been complied with. Whoever fails to comply with the provisions of this Section shall be deemed guilty of a misdemeanor of the fourth degree.

(a) For the purpose of making such inspections, the Building Commissioner, upon presentation of proper credentials is authorized to enter, examine and survey at all reasonable times all dwelling, dwelling units, rooming units, occupiable structures, structures and premises provided for in this Code. The owner and occupant of every such dwelling, dwelling unit, rooming unit, occupiable structure and premises and the person in charge thereof shall give such official free access to such dwelling, dwelling unit, rooming unit, occupiable structure and premises at all reasonable times for the purpose of such inspection, examination and survey.

shall be repealed.

Section 6. Section 1173.01, Certificate of Use and Occupancy Required, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

1173.01 CERTIFICATE OF USE AND OCCUPANCY REQUIRED.

A certificate of use and occupancy shall be obtained from the Commissioner for any of the following:

- (a) Use and occupancy of a building hereafter erected or structurally altered.
 - (b) A change in use of an existing building to a use of a different district classification under this Code.
 - (c) Use and occupancy of vacant land or change in use of land.
 - (d) Any change in the use of a non-conforming use.
 - (e) Any change of tenants of a retail unit.
 - (f) Any change in the ownership of a non-owner occupied single- or two-family dwelling.
 - (g) Any change in the ownership of any three-family or multi-family dwelling.
- No such occupancy, use or change of use shall take place until a Certificate of Use and Occupancy has been issued by the Commissioner.

shall be repealed, and new Section 1173.01, Certificate of Use and Occupancy Required, shall be enacted to read as follows:

1173.01 CERTIFICATE OF USE AND OCCUPANCY REQUIRED.

A certificate of use and occupancy shall be obtained from the Commissioner for any of the following:

- (a) Use and occupancy of a building hereafter erected or structurally altered.
 - (b) A change in use of an existing building to a use of a different district classification under this Code.
 - (c) Use and occupancy of vacant land or change in use of land.
 - (d) Any change in the use of a non-conforming use.
 - (e) Any change of tenants of a retail unit.
 - ~~(f) Any change in the ownership of a non-owner occupied single- or two-family dwelling.~~
 - ~~(g) Any change in the ownership of any three family or multi family dwelling.~~
- No such occupancy, use or change of use shall take place until a Certificate of Use and Occupancy has been issued by the Commissioner.

Section 7. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were passed in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such actions were in meetings open to the public and in compliance with legal requirements.

Section 8. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in its preamble, and provided it receives the affirmative vote of at least two thirds of the members of Council this ordinance shall take effect and be in force on January 1, 2019, or otherwise it shall take effect and be in force after the earliest period allowed by law.

0Adopted: _____

President of Council

Clerk of Council

Approved: _____

Mayor