

**AN ORDINANCE AUTHORIZING THE DENIAL OF PERMITS AND APPROVALS IN ACCORDANCE WITH ACT NO. 90-2010 FOR SERIOUS CODE VIOLATIONS AND TO FURTHER AUTHORIZE THE RECOVERY OF COSTS AND PENALTIES, INCLUDING ATTORNEYS FEES OR FOR THE ABATEMENT OR PREVENTION OF SERIOUS CODE VIOLATION BY AN ACTION IN COURT TO THE FULL EXTENT ALLOWED BY THAT ACT WHILE PRESERVING ALL REMEDIES TO THE RECOVERY, PREVENTION, ABATEMENT OR RESTRAINT OF CODE VIOLATIONS UNDER OTHER STATUTES AND ORDINANCES**

**I. SHORT TITLE.**

- A. This Ordinance may be cited as the "East Conemaugh Borough Neighborhood Blight Reclamation and Revitalization Ordinance."

**II. PURPOSE.**

- A. This Ordinance is to implement in East Conemaugh Borough the provisions of the act of October 27, 2010 (P.L. , No. 90), 53 Pa.C.S. Ch. 61, known as the Neighborhood Blight Reclamation and Revitalization Act.
- B. There are deteriorated properties located in East Conemaugh Borough as a result of neglect by their owners in violation of applicable State and municipal codes; and
- C. These deteriorated properties create public nuisances which have an impact on crime and the quality of life of the residents of East Conemaugh Borough and require significant expenditures of public funds in order to abate and correct the nuisances; and
- D. In order to address these situations, it is appropriate to deny certain governmental permits and approvals in order:
1. To prohibit property owners from further extending their financial commitments so as to render themselves unable to:
    - a. abate or
    - b. correct
      - (1) the code,
      - (2) statutory and
      - (3) regulatory violations or
      - (4) tax delinquencies.
  2. To reduce the likelihood that this municipal and other municipalities will have to address the owners' neglect and resulting deteriorated properties.
  3. To sanction the owners for not adhering to their legal obligations to East Conemaugh Borough, as well as to tenants, adjoining property owners and neighborhoods.

### III. DEFINITIONS.

A. The following words and phrases when used in this ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

1. "Act." The act of October 27, 2010 (P.L. , No. 90), 53 Pa.C.S. Ch. 61, known as the Neighborhood Blight Reclamation and Revitalization Act.
2. "Building." A residential, commercial or industrial building or structure and the land appurtenant to it.
3. "Code." A building, housing, property maintenance, fire, health or other public safety ordinance enacted by a municipality.
  - a. The term "Code" does not include a subdivision and land development ordinance or a zoning ordinance enacted by a municipality.
4. "Court." The Court of Common Pleas of Cambria County, Pennsylvania.
5. "Mortgage lender." A business association defined as a "banking institution" or "mortgage lender" under 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry licensing and consumer protection) that is in possession of or holds title to real property pursuant to, in enforcement of or to protect rights arising under a mortgage, mortgage note, deed of trust or other transaction that created a security interest in the real property.
6. "Municipality." A city, borough, incorporated town, township or home rule, optional plan or optional charter municipality or municipal authority in this Commonwealth and any entity formed pursuant to the act of Dec. 19, 1996 (P.L. 1158, No. 177), § 1, 53 Pa.C.S. Ch. 23 (relating to intergovernmental cooperation).
7. "Municipal Permit." Privileges relating to real property granted by East Conemaugh Borough that are building permits issued pursuant to the Uniform Construction Code Ordinance adopted by East Conemaugh Borough, Zoning Permits, Special Exceptions, Conditional Uses and Variances granted under the East Conemaugh Borough Zoning Ordinance, as well as any other ordinance authorizing a municipal permit affecting real property for which the municipality desires deny permits under this Ordinance.
  - a. The term "Municipal Permit" does not include decisions on the substantive validity of a zoning ordinance or map such a validity variance or the acceptance of a curative amendment.
8. "Owner." A Person who has title to or partial title to or an interest in any residential, commercial or industrial real estate, and who possesses and controls the real estate.
  - a. The term "Owner" includes, but is not limited to, heirs, assigns, beneficiaries and lessees, provided this ownership interest is a matter of public record, including lessees under leases for which a memorandum of lease is recorded in accordance with the act of June 2, 1959 (P.L. 254 (vol. 1), No. 86), 21 P.S. § 405.
  - b. The term "Owner" does not include "Mortgage Lender" as that term is defined in this Ordinance.
9. "Public Nuisance." Real or Personal Property which, because of its physical condition or use, is regarded as a public nuisance at common law or has been declared by the codes enforcement officer for East Conemaugh Borough a public nuisance in accordance with:

- a. the International Property Maintenance Code adopted by Ordinance ,
  - b. the East Conemaugh Borough Nuisance Ordinance;
  - c. the East Conemaugh Borough Solid Waste Ordinance; or
  - d. by an Order of Court.
10. "Remediation Plan" A plan for the correction of violations of any Federal, State, or local law, ordinance, code or regulation that is part of an agreement between the Owner and the Borough of East Conemaugh.
11. "Serious Violation." A violation of any Federal, State, or local law, ordinance, Code or regulation that poses an imminent threat to the health and safety of:
- a. any dwelling occupant,
  - b. occupants in surrounding structures or
  - c. any Person passing by,
- that is a building:
- (1) ordered vacated in accordance with the Department of Labor and Industry's Regulations, 34 Pa. Code § 403.84, as amended, implementing the Uniform Construction Code, the act of November 10, 1999 (P.L. 491, No. 45), as amended, 35 P.S. §§7210.101 to 7210.1103;
  - (2) placarded or posted as unfit for human habitation so as to prevent its use under the East Conemaugh Borough Property Maintenance Code adopted by Ordinance No. ; or
  - (3) which is vacant and whose exterior violates Section 304 of the 2009 ICC Property Maintenance Code adopted Ordinance No.
12. "State Law." A statute of the Commonwealth or a regulation of an agency charged with the administration and enforcement of Commonwealth law.
13. "Substantial Step." An affirmative action as determined by a property codes official or officer of the court on the part of a property owner or managing agent to remedy a Serious Violation of a Federal, State, or local Law, ordinance, or regulation including, but not limited to, physical improvements or repairs to the property, which affirmative action is subject to appeal in accordance with applicable law.
14. "Tax delinquent property." Tax delinquent real property as defined under:
- a. the act of July 7, 1947 (P.L. 1368, No. 542), known as the Real Estate Tax Sale Law;
  - b. the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Act; or
  - c. the act of October 11, 1984 (P.L. 876, No. 171) known as the Second Class City Treasurer's Sale and Collection Act, located in any municipality in this Commonwealth; or
  - d. any successor law to any of the above statutes.

15. "Uniform Construction Code." The act of November 10, 1999 (P.L. 491, No. 45), as amended, 35 P.S. §§7210.101 to 7210.1103 as implemented by Ordinance No.

#### IV. ACTIONS AGAINST OWNER OF PROPERTY WITH SERIOUS CODE VIOLATIONS.

##### A. Actions.

1. In addition to any other remedy available at law or in equity, East Conemaugh Borough may institute the following actions against the owner of any real property that is in serious violation of a code or for failure to correct a condition which causes the property to be regarded as a Public Nuisance:
  - a. (1) An in personam action may be initiated for a continuing violation for which the Owner takes no substantial step to correct within six (6) months following receipt of an order to correct the violation, unless the order is subject to a pending appeal before the administrative agency or court.
  - (2) As authorized by the Act, East Conemaugh Borough reserves the right to recover in a single action under this section, an amount equal to any penalties imposed against the owner and any costs of remediation lawfully incurred by or on behalf of the municipality to remedy any code violation.
2. A proceeding in equity.

##### B. Asset attachment.

1. General rule.
  - a. A lien may be placed against the assets of an Owner of real property that is:
    - (1) in Serious Violation of any Federal, State, or local, Law, ordinance, code or regulation; or
    - (2) regarded as a Public Nuisance after a judgment, decree or order is entered by a court of competent jurisdiction against the Owner of the property for an adjudication under IV.A. (relating to actions).
2. Limitations under the Act.
  - a. In proceedings under the Act where the owner is an association or trust no lien shall be imposed upon the individual assets of any limited partner, shareholder, member or beneficiary of the owner, except as otherwise allowed by law.

##### C. Reservation of rights and remedies under law other than the Act.

1. East Conemaugh Borough reserves and retains any and all rights and remedies existing under statutes other than the Act, its ordinances implementing them, and applicable case law to obtain recovery for the costs of preventing and abatement of code violations and public nuisances to the fullest extent allowed by law from:
  - a. Mortgage Lenders;
  - b. trustees;

- c. members of liability companies;
- d. limited partners who provide property management services to the real property;
- e. general partners of Owners;
- f. Officers;
- g. agents, or
- h. operators

that are in control of a property as an owner or otherwise hold them personally responsible for code violations as well as owners themselves.

- (1) Such owners, mortgage lenders, partners, members of limited liability companies, trustees, officers, agents and operators in control of a real property with code violations no matter how serious shall be subject to all actions at law and in equity to the full extent authorized by such statutes, ordinances and applicable case law.

- (a) Such action may be joined in one lawsuit against responsible parties with an action brought under the Act.

## V. DENIAL OF PERMITS.

### A. Permit Application Form

- 1. In addition to the requirements set forth in the governing ordinance, regulations or rules for the specific municipal permit being applied for under the ordinances referenced in the definition of "Municipal Permit" in III.A7, all applications for a Municipal Permit shall include:

- a. If the Owner is an individual:

- (1) the home address of the Owner.

- b. If the owner is an entity:

- (1) its registered office;

- (2) principal place of business;

- (3) type of entity;

- (4) in what state it was formed;

- (5) whether the entity has qualified to do business as a foreign entity in Pennsylvania by filing with the Corporation Bureau of the Pennsylvania Department of State under title 15 of the Pennsylvania Consolidated Statutes"; and

- (6) the home address of at least one responsible:

- (a) officer,

- (b) member,
- (c) trustee, or
- (d) partner shall be also be included.

2. All permit applications whether the Owner is an individual or entity shall also include a provision requiring the Owner to disclose real properties owned by the Owner both:

- a. within the boundaries of East Conemaugh Borough; and
- b. all other municipalities located within the Commonwealth:
  - (1) in which there is:
    - (a) a Serious Violation of Federal, State, or local law, code, ordinance or regulation and
    - (b) the owner has taken no substantial steps to correct the violation within six (6) months following notification of the violation; and
  - (2) for which:
    - (a) fines;
    - (b) other penalties; or
    - (c) a judgment to:
      - i) abate or
      - ii) correct were imposed by:
        - a) a magisterial district judge or
        - b) municipal court, or
        - c) a judgment at law or in equity was imposed by a court of common pleas; and
  - (3) real property owned in the Commonwealth by the Owner for which there is a:
    - (a) final and
    - (b) unappealable:
      - i) tax,
      - ii) water,
      - iii) sewer or
      - iv) refuse collection delinquency

on account of the actions of the Owner.

- c. This provision shall require the owner to disclose under the penalty or penalties provided in 18 Pa.C.S. § 4904(a) for an unsworn falsification to a government officer or employee (public servant) performing official functions the:

- (1) street address,
- (2) tax parcel number,
- (3) municipality, and
- (4) county of each such real property.

3. All applicants for a municipal permit shall accurately complete the Permit Applicant Disclosure Form as from time-to-time adopted by Resolution of East Conemaugh Borough Council subject to a penalty as described in 18 Pa.C.S. § 4904.

#### B. Municipal Permit Denials and Appeals

##### 1. Permit Denial.

- a. The appointed codes officer or agency; or
- b. the East Conemaugh Borough Zoning Hearing Board shall deny issuing to any applicant a Municipal Permit if the applicant owns real property in any municipality for which there exists on the real property:
  - (1) a final and
  - (2) unappealable:
    - (a) tax,
    - (b) water,
    - (c) sewer or
    - (d) refuse collection delinquency
      - i) on account of the actions of the Owner; or
      - ii) a Serious Violation of any Federal, State, or local law, ordinance, code or regulation; and
      - iii) the Owner has taken no substantial steps to correct the violation within six (6) months following notification of the violation and
      - iv) for which:
        - a) fines or
        - b) other penalties or

- c) a judgment to:
  - 1) abate or
  - 2) correct were imposed by a:
    - (I) magisterial district judge or
    - (II) municipal court, or
    - (III) a judgment:
      - (i) at law or
      - (ii) in equity was imposed by a court of common pleas.
- c. No denial shall be permitted on the basis of a property for which the judgment, order or decree is subject to a stay or supersedeas by an order of a court of competent jurisdiction or automatically allowed by statute or rule of court until the stay or supersedeas is lifted by the court or a higher court or the stay or supersedeas expires as otherwise provided by law.
  - (1) Where a stay or supersedeas is in effect, the property owner shall so advise the municipality seeking to deny a municipal permit.
- d. The appointed codes officer or agency, or the East Conemaugh Borough Zoning Hearing Board shall not deny a Municipal Permit to an applicant if the municipal permit is necessary to correct a violation of any Federal, State or Local law, ordinance, code or regulation, provided all other conditions for the issuance of a Municipal Permit have been complied with.
- e. The Municipal Permit denial shall not apply to an applicant's delinquency on:
  - (1) taxes,
  - (2) water,
  - (3) sewer or
  - (4) refuse collection charges

that are under appeal or otherwise contested through a court or administrative process.
- f. In issuing a denial of a Municipal Permit based on an applicant's:
  - (1) delinquency in
    - (a) real property taxes or
    - (b) municipal charges or
  - (2) for failure to abate a serious violation of Federal, State, or local law, ordinances, code or regulation on real property that the applicant owns in this Commonwealth, the code officer or agency or East Conemaugh Zoning Hearing Board shall issue the denial:



- (a) in writing and
- (b) indicate the street address,
- (c) municipal corporation and
- (d) county in which the property is located and
- (e) the court and docket number for each parcel cited as a basis for the denial.
  - i) The denial shall also state that the applicant may request a letter of compliance from the appropriate State agency, municipality or school district, in a form specified by such entity as provided in the Act.
    - a) The denial shall be delivered by:
      - 1) U.S. Certified,
      - 2) Registered, or
      - 3) Express Mail,
        - (A) Return Receipt Requested;
      - 4) personal service in manner provided by the Pennsylvania Rules of Court for Civil Procedure for original process;
      - 5) hand delivery by a member of the codes enforcement staff; or
      - 6) a private delivery service that provides for a receipt for delivery or the refusal of delivery.
- g. The information on the real property forming the basis for a Municipal Permit denial may be obtained by:
  - (1) the codes officer;
  - (2) appointed agency; or
  - (3) (a) other employee or
    - (b) agent of East Conemaugh Borough from the information disclosed by the Owner in accordance with:
      - i) Section Va. or
      - ii) any other reliable information obtained through a search of records using governmental systems:
        - a) online or
        - b) through direct contact with the office maintaining the systems such as the court

docket systems maintained by the:

- 1) Administrative Office of the Pennsylvania Courts,
  - 2) county or
  - 3) Borough department of records,
  - 4) offices of the recorder of deeds,
  - 5) municipal and county tax collectors and treasurers,
  - 6) county tax claim bureaus,
  - 7) prothonotary and clerk of court,
  - 8) private online fee based search services, and
  - 9) free searches on the Internet.
- h. Prior to making a determination on whether to deny a Municipal Permit, the codes officer or appointed agency or East Conemaugh Borough Zoning Hearing Board using the services of the Zoning Administrator or other municipal staff or contracted service provider may conduct a search using the sources described in the prior subsection.
- i. East Conemaugh Borough Zoning Hearing Board
- (1) Municipal Permits may be denied by the East Conemaugh Borough Zoning Hearing Board in accordance with the requirements of this section to the extent that approval of the Municipal Permit is within the jurisdiction of the board.
  - (2) In any proceeding before the East Conemaugh Borough Zoning Hearing Board East Conemaugh Borough may appear to present evidence that the applicant is subject to a denial by the board in accordance with this section.
  - (3) For purposes of this subsection, a Municipal Permit may only be denied to an applicant other than an Owner if:
    - (a) the applicant is acting under the direction or with the permission of an Owner; and
    - (b) the Owner owns real property satisfying the conditions of Subsection 5.
- j. Applicability of other law.
- (1) A denial of a Municipal Permit shall be subject to the provisions of 2 Pa.C.S. Chs.:
    - (a) 5 Subch. B (relating to practice and procedure of local agencies) and
    - (b) 7 Subch. B (relating to judicial review of local agency action) or
    - (c) the Pennsylvania Municipalities Planning Code, for denials subject to the act.
- k. The codes officer or appointed agency or East Conemaugh Borough Zoning Hearing Board shall

review the Disclosure Form and the searches, if any, in accordance with Subsection 5.b(1)(e) prior to any plan or construction reviews or inspections to determine if such a review or inspection is unnecessary due to a Municipal Permit being denied under this Subsection 5.

1. Right of appeal.

- (1) The Pwner shall have a right to appeal the denial of a Municipal Permit in accordance with the applicable law governing such Municipal Permit.
- (2) In the case of a denial by the coders officer or appointed codes agency, the appeal shall be made within thirty (30) days of the denial to the Board of Appeals established under the Uniform Construction Code unless the Owner has submitted to the Board of Appeals proof before the expiration of the thirty (30) days that the Owner is seeking proof of compliance under Section 5, which case the Municipal Permit and the denial shall be held in abeyance until the forty-five (45) day period for obtaining proof of compliance under Subsection 5 has expired.
- (3) In case of a denial by the East Conemaugh Borough Zoning Hearing Board, the appeal shall be to the court of common pleas.
  - (a) With respect to a denial under the grounds authorized by the Act, the denial may only be reversed for the following reasons:
    - i) An authentic proof of compliance letter in accordance Subsection 5.
    - ii) Evidence of substantial steps taken to remedy a serious violation set forth on the denial confirmed by an order of the Court or the codes officer or appointed codes agency.
    - iii) Evidence of an approved remedial plan to address a serious violation set forth on the denial.
    - iv) Evidence of a timely appeal or administrative contest of a tax, water sewer, or refuse collection delinquency.
    - v) A failure of a state agency, school district or municipality to issue a proof of compliance within 45 days of a request.
    - vi) A failure of a state agency or municipality to provide the relief required under section 6144 of the Act to an heir or devisee.
    - vii) Any other verifiable evidence that establishes by a preponderance of the evidence that a serious violation or collection delinquency of tax, water, sewer, or refuse accounts does not exist.
  - (b) With respect to denials for reasons other than the those authorized by the Act, the provisions of the Uniform Construction Code or applicable zoning law shall govern.
    - i) The Owner shall be informed of the right, time and place to make an appeal.

2. Proof of compliance.

- a. All Municipal Permits denied in accordance with this subsection shall be withheld until an

applicant obtains a letter from the appropriate State agency, municipality or school district indicating the following:

(1) the property in question:

(a) has no final and unappealable:

- i) tax,
- ii) water,
- iii) sewer or
- iv) refuse delinquencies;

(b) is now in Federal, State, and local law, ordinance, code and regulation compliance; or

(c) the Owner of the property has presented and the appropriate State agency or municipality has accepted a plan to begin remediation of any Serious Violation of Federal, State, local law. Ordinance, code, or regulation violation.

i) Acceptance of the plan may be contingent on:

- a) Beginning the Remediation Plan within no fewer than thirty (30) days following acceptance of the plan or sooner, if mutually agreeable to both the property owner and the municipality.
- b) Completing the Remediation Plan within no fewer than ninety (90) days following commencement of the plan or sooner, if mutually agreeable to both the property owner and the municipality.

b. In the event that the appropriate State agency, municipality or school district fails to issue a letter indicating tax, water, sewer, refuse, State law or code compliance or noncompliance, as the case may be, within forty-five (45) days of the request, the property in question shall be deemed to be in compliance for the purpose of this section, provided a copy of the request has been delivered to the municipality where the municipal permit has been applied for in accordance with Subsection 5.

(1) The appropriate State agency, municipality or school district shall specify the form in which the request for a compliance letter shall be made.

c. Letters required under this section shall be verified by the appropriate municipal officials before issuing to the applicant a municipal permit.

d. An Owner seeking to obtain a proof of compliance in order to obtain a Municipal Permit that would otherwise be denied shall submit a copy of the Owner's request for proof of compliance within five (5) days of the date that request is sent to the appropriate State agency, municipality or school district, to the municipality from which a municipal permit is sought or submit the copy of the request with the application for the municipal permit if such application is made at a later date.

VI. MISCELLANEOUS.

A. Conflict with other law

1. In the event of a conflict between the requirements of this Ordinance and Federal requirements applicable to demolition, disposition or redevelopment of buildings, structures or land owned by or held in trust for the Government of the United States and regulated pursuant to the United States Housing Act of 1937 (50 Stat. 888, 42 U.S.C. § 1437 et seq.) and the regulations promulgated thereunder, the Federal requirements shall prevail.

B. Relief for inherited property.

1. Where property is inherited by will or intestacy, the devisee or heir shall be given the opportunity to make payments on reasonable terms to correct code violations or to enter into a Remediation Plan in accordance with Section 6131(b)(1)(iii) of the Act and Subsection 5 (relating to municipal permit denial of this Ordinance) with East Conemaugh Borough to avoid subjecting the devisee's or heir's other properties to asset attachment or denial of permits and approvals on other properties owned by the devisee or heir.

VII. REPEALER

- A. All ordinances or parts of ordinances in conflict herewith be and are hereby repealed, except any ordinance or parts of ordinances that authorize greater remedies than this Ordinance are preserved.

VIII. SEVERABILITY

- A. The provisions of this Ordinance shall be severable and if any of its provisions are found to be unconstitutional or illegal the validity of any of the remaining provisions of this Ordinance shall not be affected thereby.

IX. EFFECTIVE DATE

- A. This Ordinance shall take effect in thirty (30) days.

**ENACTED, ORDAINED, AND APPROVED** this \_\_\_\_ day of May, 2022.

ATTEST:

EAST CONEMAUGH BOROUGH

  
Virginia Stephens, Secretary

by:  (SEAL)  
John A. Andrews, Council President

\_\_\_\_ (SEAL)  
Roland Toth, Council Member

 (SEAL)  
London Graham, Council Member

 (SEAL)  
Ronald Ling, Council Member

Charles Andrews (SEAL)  
Charles Andrews, Council Member

\_\_\_\_ (SEAL)  
Edward Grove, Council Member

Christopher DeFazio (SEAL)  
Christopher DeFazio, Council Member

Approved by Aaron Ling, Mayor, this 23<sup>rd</sup> day of May, 2022.

by: Aaron Ling (SEAL)  
Aaron Ling, Mayor

