

**UPPER MERION TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE 2020-_____

AN ORDINANCE OF TOWNSHIP OF UPPER MERION, MONTGOMERY COUNTY, PENNSYLVANIA AMENDING THE CODE OF UPPER MERION TOWNSHIP TO PROVIDE FOR A NEW CHAPTER 128, TO BE KNOWN AS “NEIGHBORHOOD BLIGHT RECLAMATION AND REVITALIZATION ORDINANCE”, PROVIDING FOR CERTAIN PROTECTIONS AND SAFEGUARDS IN ORDER TO ADDRESS DETERIORATED PROPERTIES, PUBLIC NUISANCES AND PROPERTIES IN SERIOUS VIOLATION OF STATE LAW AND/OR MUNICIPAL CODES, AND IN RESPECT THERETO, PROVIDING PROVISIONS FOR DEFINITIONS, ACTIONS, ASSET ATTACHMENT, DUTIES OF OUT-OF-STATE OWNERS OF PROPERTY, DUTIES OF ASSOCIATION AND TRUST OWNERS, MUNICIPAL PERMIT DENIALS, CONFLICT WITH OTHER LAWS, RELIEF FOR INHERITED PROPERTY, STATUTORY CONSTRUCTION, IMPLEMENTATION, REPEALER, SEVERABILITY AND IMMEDIATE EFFECTIVENESS

WHEREAS, Upper Merion Township is a municipal corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, and specifically the Second-Class Township Code; and

WHEREAS, the Legislature of the Commonwealth vests the Township of Upper Merion with the power and authority to make and adopt all such ordinances, bylaws, rules and regulations not inconsistent with or restrained by the Constitution and laws of this Commonwealth, as is expedient or necessary for the proper management, care and control of, inter alia, the Township’s finances, the maintenance of peace, good government, safety and welfare of the Township, its trade, commerce and manufacturers; and

WHEREAS, there are deteriorated properties located in all municipalities of this Commonwealth, including the Township of Upper Merion, as a result of neglect by their Owners in violation of applicable state and municipal Codes.

WHEREAS, these deteriorated properties create Public Nuisances that have an impact on crime and the quality of life of our residents and require significant expenditures of public funds in order to abate and correct the nuisances;

WHEREAS, in order to address these situations, it is appropriate to deny certain governmental permits and approvals in order to:

- (1) Protect property Owners from further extending their financial commitments so as to render themselves unable to abate or correct the Code, Statutory, and Regulatory violations or tax delinquencies.

- (2) Reduce the likelihood that other municipalities will have to address the Owners' neglect and resulting deteriorated properties.
- (3) Sanction the Owners for not adhering to their legal obligations to the Commonwealth and its municipalities, as well as to tenants, adjoining property Owners and neighborhoods.

WHEREAS, this Ordinance is intended to provide the Township of Upper Merion the full powers, rights and entitlements afforded pursuant to the Neighborhood Blight Reclamation and Revitalization Act, passed by the Pennsylvania State Legislature and signed into law as Act 90 of 2010; and

NOW THEREFORE, IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of Upper Merion Township as follows:

SECTION 1 That new Chapter 128 of the Code of the Township of Upper Merion, "Neighborhood Blight Reclamation and Revitalization", shall be and is hereby adopted and shall read as follows:

CHAPTER 128
NEIGHBORHOOD BLIGHT RECLAMATION AND REVITALIZATION

§128-1. TITLE.

This Ordinance shall be known and may be cited as the Upper Merion Township Neighborhood Blight Reclamation and Revitalization Ordinance.

§128-2. PURPOSE.

The Board of Supervisors finds it to be the best interest of the residents of the Township of Upper Merion to provide for certain protections and safeguards in order to address deteriorated properties, Public Nuisances and properties in Serious Violation of State Law and/or municipal Codes. Such protections and safeguards include denial of permits, and actions at law and in equity to address deteriorated properties, which impact upon crime, quality of life of our residences and require expenditure of public funds to correct and/or abate nuisances, violations and delinquent municipal service accounts.

§128-3. DEFINITIONS

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:

"BOARD" shall mean and refer to the Zoning Hearing Board or other body granted jurisdiction to render decisions in accordance with the Pennsylvania Municipalities Planning Code, the Pennsylvania First Class Township Code, the Code of the Township of Upper Merion, or any board authorized to act in a similar manner by law.

“BUILDING” shall mean and refer to a residential commercial or industrial building or structure and the land appurtenant to it.

“CODE” shall mean and refer to a building, housing, property maintenance, fire, health or other public safety ordinance enacted by the Township. The term does not include a subdivision and land development ordinance or a zoning ordinance enacted by a Municipality.

“COURT” shall mean and refer to the appropriate court of common pleas or magisterial district judge Court.

“MORTGAGE LENDER” shall mean and refer to 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.

"MUNICIPALITY" shall mean and refer to 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 53 Pa.C.S. CH. 23 Subch. A (relating to intergovernmental cooperation).

“MUNICIPAL PERMITS” shall mean and refer to privileges relating to real property granted by a Municipality, including, but not limited to, building permits, exceptions to zoning ordinances and occupancy permits. The term includes approvals pursuant to land use ordinances other than decisions on the substantive validity of a zoning ordinance or map or the acceptance of a curative amendment.

“OWNER” shall mean and refer to a holder of the title to residential, commercial or industrial real estate, other than a Mortgage Lender, who possesses and controls the real estate. The term includes, but is not limited to, heirs, assigns, beneficiaries and lessees, provided this ownership interest is a matter of public record.

“PUBLIC NUISANCE” shall mean and refer to property which, because of its physical condition or use, is regarded as a public nuisance at common law or has been declared by the appropriate official a public nuisance in accordance with a municipal code.

“SERIOUS VIOLATION” shall mean and refer to a violation of a State Law or a Code that poses an imminent threat to the health and safety of a dwelling occupant, occupants in surrounding structures or passersby.

“STATE LAW” shall mean and refer to statute of the Commonwealth or a regulation of an agency charged with the administration and enforcement of Commonwealth law.

“SUBSTANTIAL STEP” shall mean and refer to an affirmative action as determined by a property Code official or officer of the Court on the part of a property Owner or managing agent to remedy a Serious Violation of a State Law or municipal Code, including but not limited to, physical improvements or repairs to the property, which affirmative action is subject to appeal in accordance with applicable law.

“TAX DELINQUENT PROPERTY” shall mean and refer to tax delinquent real property as defined under the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law; the act of May 16, 1923 (P.L.207, No.153), referred to as the municipal claim and tax lien law; or 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.

“TOWNSHIP” shall mean and refer to the Township of Upper Merion, County of Montgomery, Commonwealth of Pennsylvania.

§128-4. ACTIONS.

In addition to any other remedy available at law or in equity, the Township 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 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) Notwithstanding any law limiting the form of action for recovery of penalties by a Municipality for the violation of a Code, the Township may 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 Township to remedy any Code violation.
- (B) A proceeding in equity.

§128-5. ASSET ATTACHMENT.

(A) GENERAL RULE. – A lien may be placed against the assets of an Owner of real property that is in Serious Violation of a Code or is regarded as a Public Nuisance after a judgment against the Owner of the property for an adjudication under Section 128-4 (relating to Actions).

(B) CONSTRUCTION. – Nothing in this section shall be construed to authorize, in the case of an Owner that is an association or trust, a lien on the individual assets of the general partner or trustee, except as otherwise allowed by law, limited partner, shareholder, member or beneficiary of the association or trust.

§128-6. DUTY OF OUR-OF-STATE OWNERS OF PROPERTY IN THIS COMMONWEALTH.

A person who lives or has a principal place of residence outside this Commonwealth, who owns property in this Commonwealth against which Code violations have been cited and the person is charged under 18 Pa.C.S. (relating to crimes and offenses), and who has been properly notified of the violations may be extradited to this Commonwealth to face criminal prosecution to the full extent allowed and in the manner authorized by 42 Pa.C.S. Ch. 91 (relating to detainers and extradition)..

§128-7. DUTY OF ASSOCIATION AND TRUST OWNERS.

Where, after reasonable efforts, service or process for a notice or citation for any Code violation for any real property owned by an association or trust cannot be accomplished by handing a copy of the notice or citation to an executive officer, partner of the trustee or the association or trust or to the manager, trustee or clerk in charge of the property, the delivery of the notice or citation may occur by registered, certified or united states express mail, accompanied by a delivery confirmation:

- (A) To the registered office of the association or trust; or
- (B) Where the association or trust does not have a registered office, to the mailing address used for real estate tax collection purposes, if accompanied by the posting of a conspicuous notice to the property and by handing a copy of the notice or citation to the person in charge of the property at that time.

§128-8. MUNICIPAL PERMIT DENIALS.

(A) The Township or a Board may deny issuing an 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 unappealable tax, water, sewer, refuse collection or other municipal services delinquency on account of the actions of the Owner; or
- (2) A Serious Violation of State Law or a Code and the Owner has taken no Substantial Step to correct the Serious Violation within six months following notification of the violation and for which fines and other penalties or a judgment to abate or correct were imposed by a Magisterial District Judge or Municipal Court, or a judgment at law or in equity was imposed by a Court of Common Pleas. However, no denial shall be permitted on the basis of a property for which the judgment, order or decree is subject or

supersedes 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. Where a stay or supersedeas is in effect, the property Owner shall so advise the Township or Board seeking to deny a Municipal Permit. The Township or Board shall not deny a Municipal Permit to an applicant if the Municipal Permit is necessary to correct a violation of State Law or Code.

(B) The Municipal Permit denial shall not apply to an applicant's delinquency on taxes, water, sewer or refuse collection charges that are under appeal or otherwise contested through a Court or administrative process.

(C) In issuing a denial of a Municipal Permit based on an applicant's delinquency in real property taxes or municipal charges or for failure to abate a Serious Violation of State Law or a Code on real property that the applicant owns in this Commonwealth, the Township or Board shall indicate the street address, municipal corporation and county in which the property is located and the Court and docket number for each parcel cited as a basis for the denial. 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 this section.

(D) All Municipal Permits denied in accordance with this subsection may 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 has no final and unappealable tax, water, sewer or refuse delinquencies;

(2) the property in question is now in State Law and Code compliance; or

(3) the Owner of the property has presented and the appropriate State agency or Municipality has accepted a plan to begin remediation of a Serious Violation of State Law or a Code. Acceptance of the plan may be contingent on:

(a) Beginning the remediation plan with 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.

(E) 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.

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

(F) Letters required under this section shall be verified by the appropriate municipal officials before issuing to the applicant a Municipal Permit.

(G) (1) Boards, including the Township Zoning Hearing Board, may deny approval of Municipal Permits – which includes special exception approval and variance relief – if warranted as set forth above to the extent that approval of such a Municipal Permit is within the jurisdiction of the Board.

(2) In any proceeding before a Board other than the governing body of the Township, the Township may appear to present evidence that the applicant is subject to a denial by the Board in accordance with this Section.

(3) For the purposes of this subsection, a Municipal Permit may only be denied to an applicant other than an Owner if the applicant is acting under the direction or with the permission of an Owner; and the Owner owns real property that is subject to denial as set forth above.

(H) A denial of a Municipal Permit shall be subject to the provisions of 2 Pa.C.S. Chs. 5 Subch. B (relating to practice and procedure of local agencies) and 7 Subch. B (relating to judicial review of local agency action) or the Pennsylvania Municipalities Planning Code, for denials subject to the act.

§128-9. CONFLICT WITH OTHER LAW.

In the event of a conflict between the requirements of this chapter 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.

§128-10. RELIEF FOR INHERITED PROPERTY.

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 agreement under section 184-8(D)(3) (relating to Municipal Permit denial) with a Municipality to avoid subjecting the devisee's or heir's other properties to asset attachment or denials of permits and approvals on other properties owned by the devisee or heir.

§128-11. CONSTRUCTION.

Nothing in this chapter shall be construed to abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies

SECTION 2: The Township Manager, Code Enforcement Department and Township Solicitor, and all others employed or appointed by the Township, are authorized to take all actions necessary to ensure implementation of and effect the purpose hereof.

SECTION 3: Any and all Ordinances and/or Resolutions, or parts thereof, conflicting herewith are repealed insofar as the matters herein are affected.

SECTION 4: The provisions of this Ordinance are severable, and if any clause, sentence, subsection or section hereof shall be adjudged by any Court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder but shall be confined in its operation and application to the clause, sentence, subsection or section rendered. It is hereby declared the intent of the Board of Supervisors that this ordinance would have been adopted if such illegal, invalid, or unconstitutional clause, sentence, subsection, or section had not been included therein.

SECTION 5: This is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the Township of Upper Merion.

ORDAINED AND ENACTED by the Board of Supervisors of Upper Merion Township, Montgomery County, Pennsylvania.

ENACTED this 3rd day of December, 2020.

UPPER MERION TOWNSHIP

BY: _____
William Jenaway, Chairperson
BOARD OF SUPERVISORS

Attest: _____
Anthony T. Hamaday
Township Secretary