

ORDINANCE NO. 753
BOROUGH OF DARBY
COUNTY OF DELAWARE
COMMONWEALTH OF PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF DARBY AMENDING
THE CODE OF THE BOROUGH OF DARBY, AS AMENDED, TO
PROVIDE FOR A NEW CHAPTER ENTITLED CHAPTER 129 –
NEIGHBORHOOD BLIGHT RECLAMATION AND
REVITALIZATION.

WHEREAS, the Borough of Darby is a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, including but not limited to the Borough Code; and,

WHEREAS, the Legislature of the Commonwealth vests the Borough of Darby 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 Borough's finances, the maintenance of peace, good government, safety and welfare of the Borough, its trade, commerce and manufacturers; and,

WHEREAS, there are deteriorated properties located in the Borough of Darby because 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:

(i) to prohibit 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.

(ii) to reduce the likelihood that other municipalities will have to address the owners' neglect and resulting deteriorated properties.

(iii) to 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 Darby 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 this __ day of _____, 2011, it is hereby Enacted and Ordained by the Council of the Borough of Darby, that:

SECTION I-The Code of the Borough of Darby shall be amended to add Chapter 129 to Article II, which shall read as follows:

CHAPTER 129

NEIGHBORHOOD BLIGHT RECLAMATION AND REVITALIZATION

§129-1 - TITLE. This Ordinance shall be known as the Darby Borough Blight Reclamation and Revitalization Ordinance.

§129-2 - PURPOSE. The Borough Council finds it to be the best interest of the residents of the Borough of Darby 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 residents and require expenditure of public funds to correct and/or abate nuisances, violations and delinquent municipal service accounts.

§129-3 - DEFINITIONS. The following words and phrases when used in this Chapter 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 Municipalities Planning Code, the State Borough Code, the Code of the Borough of Darby, or any board authorized to act in a similar manner by law.

"BOROUGH" shall refer to the Borough of Darby, County of Delaware, Commonwealth of Pennsylvania.

"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 Borough. 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 Subchapter A of Chapter 23 (relating to intergovernmental cooperation).

"MUNICIPAL PERMITS" shall mean and refer too 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.

"MUNICIPAL SERVICES" shall mean and refer to services provided at a cost by the Borough or other municipal entity, including water service, sanitary sewer service, refuse collection and parking allotments/facilities, which benefit individual properties and also serve to benefit the overall welfare, safety and health of all residents of the Borough.

"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 a 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.

§129-10 - ACTIONS. In addition to any other remedy available at law or in equity, the 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 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 the recovery of penalties by a municipality for the violation of a code, the Borough 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 Borough to remedy any code violation.
- (B) A proceeding in equity.
- (C) 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, decree or order is entered by a court of competent jurisdiction against the owner of the property for an adjudication under section 6111 (relating to actions). 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.

§129-20 - OUT-OF-STATE OWNERS; SERVICE OF PROCESS UPON ASSOCIATION AND TRUSTS.

(A) 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).

(B) Where, after reasonable efforts, service of 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 or trustee of 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 to the registered office of the association or citation trust. Where the association or trust does not have a registered office, notice may occur by registered, certified or United States Express Mail, 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.

§129-30 - MUNICIPAL PERMIT DENIALS.

(A) The Borough 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) Tax and/or Municipal Services delinquencies on account of the actions of the owner; or
- (2) a Serious Violation 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 or 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 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. Where a stay or supersedeas is in effect, the property owner shall so advise the Borough or Board seeking to deny a municipal permit. The Borough 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 a 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 Borough 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 within no fewer than 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 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 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. Letters required under this section shall be verified by the appropriate municipal officials before issuing to the applicant a Municipal Permit.

- (F) Boards, including the Borough 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.
- (G) In any proceeding before a Board other than the governing body of the Borough, the Borough may appear to present evidence that the applicant is subject to a denial by the board in accordance with this section.
- (H) For 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.
- (I) 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.

§129-40 - 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.

§129-50 - 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 6131(b)(1)(iii) (relating to municipal permit denial) with a municipality 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.

§129-60 - 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 II: The Borough Manager, Code Enforcement Department and Borough Solicitor, and all others employed or appointed by Darby, are authorized to take all action necessary to ensure implementation of and effect the purpose hereof.

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

SECTION IV: 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 Borough Council that this ordinance would have been adopted if such illegal, invalid, or unconstitutional clause, sentence, subsection, or section had not been included therein.

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ordinance continues on the following page]

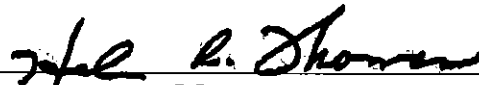
SECTION V: This is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the Council of the Borough of Darby.

PASSED by the Borough of Council this 20th day of July, 2011.



Council President,

APPROVED by the Mayor, this 20th day of July, 2011.



Mayor

ENACTED this 20th day of July, 2011.



Borough Manager/Secretary

I HEREBY CERTIFY that the foregoing is a true and correct copy of the said Ordinance duly adopted at a regular meeting of Borough Council held on the 20th day of July, 2011.



Borough Manager/Secretary