

MIDDLESEX TOWNSHIP
CUMBERLAND COUNTY, PENNSYLVANIA
ORDINANCE NO. 3 -2005

AN ORDINANCE OF THE TOWNSHIP OF MIDDLESEX, CUMBERLAND
COUNTY, PENNSYLVANIA ESTABLISHING REQUIREMENTS AND
PROCEDURES FOR THE PAYMENT, ESCROW AND USE OF FIRE LOSS
CLAIMS AND PENALTIES FOR THE VIOLATION THEREOF.

BE IT HEREBY ENACTED AND ORDAINED, and it is hereby enacted and ordained
by the Board of Supervisors of Middlesex Township, Cumberland County, Pennsylvania as
follows:

ARTICLE I – General Provisions.

SECTION 1: Legislative Intent, Legal Authority and Background.

The legislative intent, legal authority and background of this Ordinance are as follows:

- A. The Township of Middlesex is a municipal corporation organized and existing under the Pennsylvania Second Class Township Code.
- B. As such, it is a municipality as defined in the Act of May 17, 1921, P.L. 682, No. 284, known as the Insurance Company Law of 1921, added July 9, 1992, P.L. 678, No. 98, as amended October 13, 1994, P.L. 609, No. 93, 40 P.S. § 638 (herein the "Act").
- C. The Board of Supervisors intends to ensure the payment of delinquent taxes, assessments, penalties and user charges out of the payment by insurers of fire loss claims involving structures and buildings within Middlesex Township.
- D. The Board of Supervisors desires to insure the payment of costs incurred by the Township in the removal, repair or securing of buildings or structures damaged by fire out of fire loss claims paid by insurers for structures and buildings within Middlesex Township.
- E. It is the purpose of this Ordinance to deter the commission of arson and related crimes, to discourage the abandonment of property and to prevent urban blight and deterioration.
- F. The Board of Supervisors has determined that it is in the best interest of its citizens that the economic consequences of fire damage to buildings and structures in the Township not be borne by it, nor be paid out of its financial resources.

SECTION 2: Definitions.

In the interpretation and construction of this Ordinance, the following definitions shall control:

ASSOCIATION – Individuals, partnerships or associations of individuals, authorized to engage in the business of insurance in the Commonwealth of Pennsylvania as insurers on the Lloyd's Plan.

BOARD OF SUPERVISORS – The duly elected or appointed governing body of the Township of Middlesex.

BUILDING – Any enclosed or open structure.

COMPANY – Incorporated insurance companies and corporations possessing the power to insure owners of real property, mortgages and others interested in real property from loss, whether incorporated under the laws of this Commonwealth or of any other state, territory or district or under the laws of any foreign country.

EXCHANGE – Individuals, partnerships and corporations authorized by the laws of the Commonwealth of Pennsylvania to exchange with each other interinsurance or reciprocal insurance contracts.

FIRE LOSS CLAIM – Any claim arising out of fire damage to a building or structure situated in the Township of Middlesex where the amount recoverable for the fire loss, under all applicable coverages, exceeds \$7,500.

INSURER – Any person, association, company, exchange, foreign stock company, mutual company or other entity authorized by the Commonwealth of Pennsylvania to provide fire and marine insurance in the Township of Middlesex.

MUNICIPALITY – The Township of Middlesex (Middlesex Township).

MUNICIPAL OFFICER – The Secretary of Middlesex Township.

STRUCTURE – Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land. Without limitation of the foregoing, this term shall include concrete sidewalks, concrete slabs, concrete curbs, parking lots and other paved surfaces.

ARTICLE II – Delinquent Taxes, Assessments, Penalties or User Charges.

SECTION 3: Prohibition on Payment of Claims.

No insurer shall pay a fire loss claim, unless the insurer and the named insured comply with the provisions of this Ordinance.

SECTION 4: Transfer of Insurance Proceeds.

- A. No insurer doing business in the Commonwealth of Pennsylvania shall pay a fire loss claim of a named insured unless the insurer and the named insured comply with the provisions of this Ordinance.
- B. The Municipal Officer shall, upon the written request of the named insured specifying the tax description of the property, name and address of the insurer and the date agreed upon by the insurer and the named insured as the date of the receipt of a loss report of the claim, furnish the insurer either of the following within 14 working days of the request:
 - (1) A certificate, or at the discretion of Middlesex Township, a verbal notification which shall be confirmed in writing by the insurer to the effect that, as of the date specified in the request, there are no delinquent taxes, assessments, penalties or user charges against the property.
 - (2) A certificate and bill showing the amount of delinquent taxes, assessments, penalties and user charges against the property as of the date specified in the request that have not been paid as of the date of the certificate. A tax, assessment, penalty or user charge becomes delinquent at the time and on the date a lien could otherwise have been filed against the property by Middlesex Township under applicable law.
- C. Upon the receipt of a certificate pursuant to Subsection B(1) of this section, the insurer shall pay the claim of the named insured in accordance with the policy terms.
- D. Upon the receipt of a certificate and bill pursuant to Subsection B(2) of this section, the insurer shall return the bill to the Municipal Officer and transfer to the Municipal Officer an amount from the insurance proceeds necessary to pay the taxes, assessments, penalties, charges and costs as shown on the bill, or the full amount of the insurance proceeds whichever is the lesser amount. The Township of Middlesex shall receive the amount and apply or credit it to payment of the items shown in the bill.

- E. Nothing in this section shall be construed to limit the ability of Middlesex Township to recover any deficiency.

SECTION 5: Multiple Insurers or Multiple Policies.

The transfer of proceeds to the Municipal Officer shall be on a pro rata basis when a fire loss claim is covered by more than one insurer or more than one policy.

SECTION 6: Additional Procedures and Regulations by Resolution.

The Board of Supervisors may, by resolution, adopt addition procedures and regulations to implement this Article and may, by resolution, fix reasonable fees to be charged for municipal activities or services provided pursuant to this Article including, but not limited to, issuance of certificates and bills.

ARTICLE III – Municipal Costs for Removal, Repair or Securing Fire Damaged Structures.

SECTION 7: Prohibition on Payment of Claims.

No insurer shall pay a fire loss of a named insured unless the insurer and the named insured comply with the provisions of this Ordinance.

SECTION 8: Certificate of Amount.

- A. No insurer doing business in the Commonwealth of Pennsylvania shall pay a fire loss claim of a named insured unless the insurer and the named insured comply with the provisions of this Ordinance.
- B. The Municipal Officer shall, upon the written request of the named insured specifying the tax description of the property, name and address of the insurer and the date agreed upon by the insurer and the named insured as the date of the receipt of a loss report of the claim, furnish the insurer either of the following within 14 working days of the request:
 - (1) A certificate, or at the discretion of Middlesex Township, a verbal notification which shall be confirmed in writing by the insurer to the effect that, as of the date specified in the request, that, as of the date of the Municipal Officer's certificate or verbal notification, Middlesex Township has not certified any amount as total costs incurred by the Township of Middlesex for the removal, repair or securing of a building or other structure on the property.

- (2) A certificate and bill showing the amount as of the date specified in the request that, as of the date of the Municipal Officer's certificate, the amount of the total costs, if any, certified to the Municipal Officer that have been incurred by Middlesex Township for the removal, repair or securing of a building or other structure on the property. For the purposes of this provision, Middlesex Township shall provide to the Municipal Officer the total amount, if any, of such costs, if available, or the amount of costs known to the Township at the time of the Municipal Officer's certificate.

SECTION 9: Transfer of Proceeds.

After full compliance with the requirements of Section 8 of this Ordinance, the insurer shall pay the claim of the named insured, provided however, that if the loss agreed upon by the named insured and the insurer equals or exceeds 60% of the aggregate limits of liability on all applicable fire policies, the following procedures shall be followed:

- A. The insurer shall transfer from the insurance proceeds to the Municipal Officer the aggregate of \$2,000 for each \$15,000 or a claim and for each fraction of that amount of a claim, provided:
 - (1) This section is to be applied such that if the claim is \$15,000 or less, the amount transferred to Middlesex Township shall be \$2,000.
 - (2) That, if at that time of a loss report the named insured has submitted a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure in an amount less than the amount calculated under the foregoing transfer formula, the insurer shall transfer to Middlesex Township from the insurance proceeds the amount based upon the estimate.
- B. The transfer of proceeds shall be on a pro rata basis by all insurers and on all applicable policies. Policy proceeds remaining after the transfer to Middlesex Township shall be disbursed in accordance with the policy terms.

SECTION 10: Return of Proceeds.

After the transfer, the named insured may submit a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure and the Municipal Officer shall return to the named insured the amount of the funds transferred to Middlesex Township in excess of the estimate, provided that Middlesex Township has not commenced to remove, repair or secure the building or other structure.

SECTION 11: Escrow of Proceeds.

Upon the receipt of proceeds under this section, Middlesex Township shall do the following:

- A. The Municipal Officer shall place the proceeds in a separate fund to be used solely as security against the total costs which are incurred by Middlesex Township for removing, repairing or securing the building or structure. Such costs shall include, without limitation, any engineering, legal or administrative costs incurred by Middlesex Township in connection with such removal, repair or security of the building or any proceedings related thereto.
- B. At the time of transfer of such proceeds, the insurer shall provide Middlesex Township with the name and address of the named insured. Upon receipt of the transferred funds and the name and the address of the named insured, the Municipal Officer shall contact the named insured, certify that the proceeds have been received by Middlesex Township and notify the named insured that the procedures under this section shall be followed.
- C. When repairs, removal or securing of the building or other structure have been completed in accordance with all applicable regulations and orders of Middlesex Township and the required proof of such completion received by the Municipal Officer and if Middlesex Township has not incurred any costs for repairs, removal or securing, the fund shall be returned to the named insured. If Middlesex Township has incurred costs for repairs, removal or securing of the building or other structure, the costs shall be paid from the fund and if excess funds remain, Middlesex Township shall transfer the remaining funds to the named insured.
- D. To the extent that interest is earned on proceeds held by Middlesex Township pursuant to this section, and retained by it, such interest shall belong to Middlesex Township. To the extent that proceeds are returned to the named insured, interest earned or such proceeds shall be distributed to the named insured at the time that the proceeds are returned.

SECTION 12: Deficiencies.

Nothing in this article shall be construed to limit the ability of Middlesex Township to recover any deficiency. Furthermore, nothing in this article shall be construed to prohibit Middlesex Township and the named insured from entering into an agreement that permits the transfer of funds to the named insured if some reasonable disposition of the damaged property has been negotiated.

SECTION 13: Additional Procedures and Regulations by Resolution.

The Board of Supervisors may, by resolution, adopt additional procedures and regulations to implement this article and may, by resolution, fix reasonable fees to be charged for Municipal activities or services provided pursuant to this article including, but not limited to, issuance of certificates and bills, performance of inspections and opening separate fund accounts.

SECTION 14: Violations and Penalties.

Any person who shall violate any provisions of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000 and costs of prosecution and, in default of payment of such fine and costs, to imprisonment for not more than 30 days.

SECTION 15: Severability.

The provisions of this Ordinance shall be severable. If any of its provisions shall be held to be unconstitutional, illegal or otherwise invalid, that decision shall not affect the validity of any of the remaining provisions of this Ordinance or any other ordinance of Middlesex Township.

SECTION 16: Effective Date.

This Ordinance shall take effect in accordance with applicable law.

DULY ENACTED AND ORDAINED this 6 day of July , 2005,
by the Board of Township Supervisors of the Township of Middlesex in public session duly assembled.

TOWNSHIP OF MIDDLESEX

By: Ch. Cunningham
Chairman

ATTEST:

Mary S. Just
Township Secretary

(Township Seal)