

Ordinance No. 2-11

**BOROUGH OF MILLERSBURG
COUNTY OF DAUPHIN
COMMONWEALTH OF PENNSYLVANIA**

AN ORDINANCE OF THE BOROUGH OF MILLERSBURG (hereinafter "Municipality"), PURSUANT TO ACT 98 OF 1992 PROVIDING THAT IN CERTAIN FIRE LOSSES THE INSURANCE COMPANY, ASSOCIATION OR EXCHANGE SHALL TRANSFER INSURANCE PROCEEDS TO A DESIGNATED OFFICER OF THE MUNICIPALITY AS A PORTION OF THE INSURANCE PROCEEDS TO BE HELD AS SECURITY AGAINST THE TOTAL COST OF REMOVING, REPAIRING, OR SECURING THE DAMAGED BUILDING, PROVIDING FOR FEES, PROVIDING FOR PENALTIES FOR VIOLATION AND SETTING FORTH PROCEDURES AND REQUIREMENTS PERTAINING TO SUCH INSURANCE PROCEEDS AND UP TO THE IMPLEMENTATION OF ACT 98 OF 1992 IN THE BOROUGH.

WHEREAS, the Commonwealth of Pennsylvania has enacted Act 98 of 1992 effective on September 7, 1992 amending the Insurance Company Law of 1921 to provide procedures for the payment of certain fire loss claims; and

WHEREAS, it is the purpose of said legislation to deter the commission of arson and related crimes, to discourage the abandonment of property, and to prevent urban blight and deterioration; and

WHEREAS, the Municipality desires to adopt an ordinance pursuant to Section 508 of the Insurance Company Law of 1921 to provide for the payment of proceeds from certain fire loss claims to the Municipality;

IT IS THEREFORE ORDAINED AND ENACTED by the Council of the Borough of Millersburg as follows:

SECTION I: DESIGNATED OFFICERS

The Borough Manager or such others as the Borough Council may designate and hereby appointed as the designated officer(s) ("Designated Municipal Officer") who is authorized to carry out all responsibilities and duties stated herein.

SECTION II: USE OF FIRE INSURANCE PROCEEDS

No insurance company, association or exchange (hereinafter the "Insuring Agent") doing business in the Commonwealth of Pennsylvania shall pay a claim of a named insured for fire damage to a structure located within Millersburg Borough where the amount recoverable for the fire loss to

the structure under all policies exceeds Seven Thousand, Five Hundred dollars (\$7,500.00), unless the Insuring Agent is furnished by the Borough with a municipal certificate pursuant to Section 508 (B) of Act 98 of 1992 (and unless there is compliance with Section 508 (C) and (D) of Act 98 of 1992 and the provisions of this Ordinance.

SECTION III: MUNICIPAL CLAIMS

Where there are delinquent taxes, assessment, penalties or user charges against the property (“municipal claims”), or there are expenses which the Borough has incurred for costs of removal, repair or securing of a building or other structure on the property (collectively “municipal expenses”), the Designated Municipal Officer shall immediately render a bill for such work, if not already done. Upon written request of the named insured specifying the tax description of the property, the name and address of the insurer and the date of receipt by the insurer of a loss report of the claim, the Designated Municipal Officer shall furnish a Certificate within fourteen (14) days after the request of the insurer either:

- a. Stating that there are no unpaid municipal claims or municipal expenses against the property; or
- b. Specifying the nature and amount of such claims or expenses, accompanied by a bill for such amounts.

In accordance with subsection (b) of this section, the insurer shall transfer to the Designated Municipal Officer an amount from the insurance proceeds sufficient to pay municipal claims and municipal expenses prior to making payment to the named insured, subject to the provisions of Section IV hereof.

Where pursuant to Section 508(B)(1)(1) of Act 98 of 1992, the Borough issues a certificate indicating that there are no delinquent taxes, assessments, penalties or user charges against real property, the Insuring Agent shall pay the claim of the named insured, provided however, that if the loss agreed upon by the named insured and the Insuring Agent equals or exceeds 60 percent of the aggregate limits of liability on all fire policies covering the building restructure, the following procedures must be followed:

- (1) The Insuring Agent shall transfer from the insurance proceeds to the designated officer of the Municipality in the aggregate of \$2,000.00 for each \$15,000.00 if a claim and for each fraction of that amount of a claim, this section to be applied such that if the claim is \$15,000.00 or less, the amount transferred to the Municipality shall be \$2,000.00; or
- (2) If at the time of a proof of loss agreed to between the named and Insuring Agent, the named insured has submitted a contractor’s signed estimate of the costs of removing, repairing or securing the building or other structure, the Insuring Agent shall transfer to the Municipality from the insurance proceeds the amount specified in the estimate.

- (3) The transfer of proceeds shall be on pro rata basis by all companies, associations or exchanges insuring the building or other structure.
- (4) 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 designated officer shall return the amount of the funds transferred to the Municipality in excess of the estimate to the named insured, if the Municipality has not commenced to remove, repair or secure the building or other structure.
- (5) Upon receipt of proceeds under this section, the Municipality shall do the following:
 - (a) The designated officer shall place the proceeds in a separate fund to be used solely as security against the total costs of removing, repairing, or securing the building or structure which are incurred by the Municipality. Such costs shall include, without limitation, any engineering, legal or administrative costs incurred by the Municipality in connection with such removal, repair or securing of the building or any proceedings related thereto; and
 - (b) It is the obligation of the Insuring Agent when transferring the proceeds to provide the Municipality with the name and address of the named insured. Upon receipt of the transferred funds and the name and address of the named insured, the designated officer shall contact the named insured, certify that the proceeds have been received by the Municipality and notify the named insured that the procedures under this subsection shall be followed; and
 - (c) When repairs, removal or securing of the building or other structure have been completed in accordance with all applicable regulations and orders of the Municipality and the required proof of such completion received by the designated officer, and if the Municipality has not incurred any costs for repairs, removal or securing, the fund shall be returned to the named insured. If the Municipality 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, the Municipality shall transfer the remaining funds to the named insured; and
 - (d) To the extent that interest is earned on proceeds held by the Municipality pursuant to this Section, and not returned to the named insured, such interest shall belong to the Municipality. To the extent that proceeds are returned to the named insured, interest earned on such proceeds shall be distributed to the named insured at the time that the proceeds are returned upon receipt of a Certificate issued by the Designated Municipal Officer that the repair, removal, or securing of the building or other structure has been completed in accordance with all applicable Codes and Regulations of the Borough.

- (6) Nothing in this section shall be constructed to limit the ability of the Municipality to recover any deficiency. Furthermore, nothing in this subsection shall be construed to prohibit the Municipality and the named insured from entering into an agreement that permits the transfer of funds to the named insured or some other reasonable disposition of the damaged property has been negotiated.

SECTION IV: INSURANCE COMPANY RIGHTS RESERVED

An insurance company, or its affiliates or assigns, making payment of policy proceeds under this Ordinance for delinquent taxes or structural removal liens or removal expenses insured by the Borough of Millersburg shall have full benefit of such payment including all rights of subrogation and of assignment.

SECTION V: REASONABLE MUNICIPAL FEES

The Borough Council may by resolution adopt procedures and regulations to implement Act 98 of 1992 and this Ordinance and may by resolution fix reasonable fees to be charged for municipal activities or services provided pursuant to Act 98 of 1992 and this Ordinance; including but not limited to issuance of certificates and bills, performance of inspections and opening separate fund accounts.

SECTION VI: PENALTIES, COSTS AND ATTORNEYS FEES

Any owner of property, any named insured or any insuring agent who violates this Ordinance shall be subject to a penalty of up to \$1,000.00 per violation together with legal costs and reasonable attorneys fees of not less than 5% of the amount due, as incurred by the Municipality in enforcement of this Ordinance.

SECTION VII: SEVERABILITY

The provisions of this Ordinance shall be severable and, if any of the provisions hereof shall be held to be invalid or unenforceable, the remaining provisions of this Ordinance shall remain in effect.

SECTION VIII: CONSTRUCTION

This Ordinance shall be liberally construed to accomplish its purpose to deter commission of arson and related crimes, to discourage the abandonment of property and to prevent urban blight and deterioration, and to assure the payment of municipal expenses.

SECTION IX: CONFLICTS AND COMPLIANCE WITH STATE LAW

All ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance are hereby repealed insofar as same affects this Ordinance.

If any sentence, clause, section and/or provision of this Ordinance is deemed to be in conflict with state law, the terms of any such state law shall supersede the language and provisions of this Ordinance and such state law shall control. Any conflict with state law shall not invalidate this Ordinance nor be a basis for failing to pay any and all municipal expenses. Act 93 of 1994 is incorporated herein and shall be the basis for payment of all municipal expense if this Ordinance is rendered null and void, in whole or in part.

SECTION X: EFFECTIVE DATE

This Ordinance shall become effective five days after the adoption hereof.

SECTION XI: NOTIFICATION TO PENNSYLVANIA DEPARTMENT OF COMMUNITY
AND ECONOMIC DEVELOPMENT

The Secretary of Millersburg Borough shall transmit a certified copy of this Ordinance promptly to the Pennsylvania Department of Community and Economic Development or to the successor agency of the Pennsylvania Department of Community and Economic Development.

ORDAINED AND ENACTED at a duly assembled public meeting by the Council of the Borough of Millersburg, this 9th day of February, 2011.

Attest:

BOROUGH OF MILLERSBURG

Ann Bowman Jackson
Borough Secretary

Christopher J. Ditt
President of Council

APPROVED THIS 9th DAY OF February, 2011.

Richard D. Helberson
Mayor

SEAL