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CODE ENFORCEMENT

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[HISTORY: Adopted by the Borough Council of the Borough of Pennsburg 12-5-1988 by Ord. No. 3-88. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 34.

Existing structures — See Ch. 42.

ARTICLE I
Application

§ 36-1. Applicable standards.

The term "applicable codes and ordinances" and the enforcement thereof as referred to in this as well as other sections of this chapter shall apply to those codes and/or ordinances which are listed as follows:

- A. The BOCA National Building Code, 1987 Edition, as published by the Building Officials and Code Administrators International, Inc.
- B. The BOCA National Existing Structures Code, 1987 Edition, as published by the Building Officials and Code Administrators International, Inc.

ARTICLE II
Code Enforcement Office/Officer

§ 36-2. Creation of Office.

There is hereby created by the Borough Council of the municipality an Office to be known as the "Office of Code Enforcement." Said Office shall have the responsibility for administering and enforcing the provisions of this chapter and of those other codes and/or ordinances of the municipality, referred to as "applicable codes and ordinances" in § 36-1 of this chapter, which designate said Office of Code Enforcement as their official administration and enforcement agency.

§ 36-3. Appointment of Officer.

There shall be appointed, by the Borough Council of the municipality, a Code Enforcement Officer who shall be in charge of the Office of Code Enforcement of the municipality. The Code Enforcement Officer shall supervise such other employees or assistants as shall be necessary for the administration and execution of the responsibilities of said Office, as appointed and approved by the Borough Council. Said Code Enforcement Officer and other personnel may consist of employees directly hired and compensated by the municipality.

§ 36-4. Relief from liability.

The Code Enforcement Officer or other official or employee shall not, while acting for the municipality, render himself liable personally because of any act or omission as required or permitted in the discharge of his official duties. Any suit instituted against such Code Enforcement Officer, official or employee of his duties shall be defended by the Solicitor of the municipality, and in no case will said Officer, official or employee be liable for costs in any action, suit or proceeding.

§ 36-5. Official record.

An official record shall be kept of all business and activities of the Office of Code Enforcement, and all such records shall be open to the public for inspection at all appropriate times, except that no individual, owner, operator, occupant or other person shall be subject to unwarranted invasion of privacy, and except that all evidence or information obtained in the course of any inspection shall be kept confidential. Such evidence or information shall not be disclosed, except as may be necessary in the judgment of the Code Enforcement Officer for the proper and effective administration and enforcement of the provisions of this chapter, and shall not otherwise be made public without the consent of the owner, occupant, operator or other person in charge of the unit, structure or premises inspected.

§ 36-6. Enforcement.

The Code Enforcement Officer shall enforce and administer all of the provisions of this chapter and of those other applicable codes and ordinances which establish the Office of Code Enforcement as their official administration and enforcement agency.

§ 36-7. Duties of Officer.

The duties of the Code Enforcement Officer shall include the receipt of applications; the issuance of permits, notices, certificates and orders; the making of inspections to determine conformance with applicable codes and ordinances; the undertaking of systematic inspection programs; the undertaking of searches and investigations; the recommendation of appropriate administrative rules for review and adoption by the Code Hearing Board; the keeping of records; the issuance of written annual reports; and such other activities as may be required.

§ 36-8. Right of entry.

- A. In the discharge of his duties and upon reasonable cause of a code violation, the Code Enforcement Officer or his authorized representative, upon showing proper identification where requested, is hereby authorized to enter and inspect, between the hours of 9:00 a.m. and 4:00 p.m., any structure or premises in the municipality to enforce the provisions of this chapter and of those other applicable codes and ordinances. The assistance and cooperation of all other municipal officials, including Police and Fire Departments, shall be available to the Code Enforcement Officer to assist in the performance of his duties and in securing the right of entry.
- B. The Code Enforcement Officer and the owner, operator or occupant or other person in charge of any structure or premises subject to the provisions of this chapter may agree to an inspection by appointment at a mutually convenient time.
- C. The owner, operator or occupant or other person in charge of any structure or premises shall give the Code Enforcement Officer entry and free access thereto and to every part of the structure or to the premises surrounding the structure.
- D. If any owner, operator or occupant or other person in charge fails or refuses to permit entry and free access to the structure or premises under his control, or to any part thereof with

respect to any authorized inspection, the Code Enforcement Officer may, upon a showing that probable cause exists for the inspection, file a complaint and may petition for and obtain an order directing compliance with the inspection requirements of this chapter from a court of competent jurisdiction. Any person who refuses to comply with such an order issued pursuant to this section shall be subject to such penalties as may be authorized by law for violation of a court order.

ARTICLE III
Permits, Fees and Certificates

§ 36-9. Permit application required.

An application for a permit shall be required in accordance with the provisions of those applicable codes and ordinances which the Office of Code Enforcement has the responsibility to administer. Said application shall be submitted in such form as may be prescribed by the Code Enforcement Officer and shall be accompanied by any required fee.

§ 36-10. Review of application.

The Code Enforcement Officer shall examine said application to determine compliance with those other applicable codes and ordinances of the municipality and shall, within 90 days after filing, either approve or reject said application. If said application is rejected, the Code Enforcement Officer shall inform the applicant, in writing, stating the reasons for such rejection.

§ 36-11. Fees.

Applicants for permits required by any of the applicable codes and ordinances shall pay, at the time of application, to the Code Enforcement Officer, for use by the municipality, fees as established by resolution of the Board.

§ 36-12. Duration of permit; extensions.

- A. An application for a permit for any proposed work shall be deemed to have been abandoned six months after the date of filing unless such application has been diligently prosecuted or a permit shall have been issued, except that, for reasonable cause, the Code Enforcement Officer may grant one or more extensions of time for additional periods not exceeding 90 days each.
- B. All permits granted under any of the above applicable codes and ordinances shall be good for a period of one year, provided that extensions may be granted by the Code Enforcement Officer for good reason, except that any permit granted for demolition activities shall be valid for three months only, and if such demolition work is not completed within that time, any bond posted by the applicant shall be forfeited.

§ 36-13. Required certificates.

The following certificates shall be required in accordance with the provisions of those other applicable codes and ordinances which the Office of Code Enforcement has the responsibility to administer. Said certificates may be issued separately or combined in the form of a single certificate.

- A. Certificate of use and occupancy. In accordance with Section 119.0 of the BOCA National Building Code, a certificate of use and occupancy shall be required, and no new building or portion of an existing building which is enlarged or altered shall be used or occupied, in whole or in part, until such a certificate of use and occupancy shall have been issued by the Code Enforcement Officer. In addition to all other requirements, all lots with newly constructed principal buildings shall be staked and surveyed as required by the Pennsburg Borough Subdivision and Land Development Ordinance¹ and Section 113 of the Pennsburg Borough Engineering Standards prior to the issuance of a certificate of use and occupancy. **[Amended 10-7-2002 by Ord. No. 12-02]**
- B. Certificate of approval. A certificate of approval shall be required for any electrical or plumbing work completed under the provisions of the applicable codes and ordinances. All applicants shall apply to the Office of Code Enforcement for such a certificate of approval within 30 days of the completion of the building structure, work or premises.
- C. Other certificates. Any other permits, certificates or licenses, as required by the applicable codes and ordinances, shall be obtained by the applicant in accordance with the provisions of said applicable codes and ordinances. Application for such permits, certificates or licenses shall be made to the Code Enforcement Officer.

ARTICLE IV Penalties

§ 36-14. Procedure.

Whenever the Code Enforcement Officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this chapter or of the other applicable codes and ordinances or of any rules and regulations adopted pursuant thereto, he shall proceed as follows:

- A. The Code Enforcement Officer shall serve notice, in writing, of the alleged violation, which shall be signed by the Code Enforcement Officer or his authorized representative.
 - (1) Said notice shall be served personally to the responsible owner, occupant, operator or other person in charge, or served by registered mail with a return receipt requested; or, where such responsible person in charge cannot be found, service may be made by posting a notice in or about the structure or premises, or by publishing such notice in a newspaper of general circulation for a period of three consecutive days, or served by any other method authorized under the laws of the Commonwealth of Pennsylvania.

¹ Editor's Note: See Ch. 96, Subdivision and Land Development.

- (2) Said notice shall include a statement of the reasons why the notice is being issued, the sections of the code and/or ordinances which have been violated and the remedial actions required.
 - (3) Said notice shall allow a reasonable time, not to exceed 60 days, for the initiation and correction of the violation alleged or of the remedial actions required, except where emergency conditions exist which require immediate corrective action.
 - (4) Said notice shall contain a statement indicating that the notice will become an order if no request and approval for an extension of time is made to the Code Enforcement Officer or if no petition for an appeal or hearing is requested before the Code Hearing Board within 15 days from the receipt of said notice.
- B. The Code Enforcement Officer may grant a request for a reasonable extension of time where he has evidence to believe that the responsible person is attempting to remove the alleged violation. However, no such extension of time may exceed a period of 90 days, unless authorized by the Code Hearing Board upon appeal of the responsible owner, operator, occupant or other person in charge.

§ 36-15. Violations and penalties.

- A. Any person who fails to correct a violation or institute a remedial action as ordered by the Code Enforcement Officer or who violates a provision or fails to comply with any requirements of this chapter or of any of the other applicable codes or ordinances shall be subject, for each violation, to a fine of not less than \$50 nor more than \$300 and costs of prosecution and, in default of payment of such fine and costs, to imprisonment not exceeding 30 days, and each day's failure to comply with any such provision or requirement or any such order shall constitute a separate offense.
- B. The imposition of the penalties herein prescribed shall not preclude the Solicitor representing the municipality from initiating, and he is hereby ordered to initiate, appropriate actions or proceedings in law or in equity to effect the purposes of this chapter.

ARTICLE V Unfit Dwellings

§ 36-16. Declaration as public nuisance.

Structures which contain dwellings which are unfit for human habitation or structures which are dangerous or unsafe and structures which contain dangerous conditions or materials, as defined by the applicable codes and ordinances of the municipality, are hereby declared to be a public nuisance.

§ 36-17. Order to remove nuisance.

The Code Enforcement Officer shall order the responsible owner, operator, occupant or person in charge of the structure or premises which are dangerous, unsafe or unfit for human habitation to vacate, repair and/or demolish said structure and to remove the public nuisance as provided

for in this chapter and in the applicable codes and ordinances of the municipality, in accordance with the laws of the Commonwealth of Pennsylvania.

§ 36-18. Failure to comply; abatement.

Whenever an order to vacate, repair and/or demolish a structure which is a public nuisance because it is unsafe, dangerous or unfit for human habitation has not been complied with, the

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Code Enforcement Officer may, in accordance with the laws of the Commonwealth of Pennsylvania, proceed to cause the structure to be vacated, repaired and/or demolished or take such other action as is necessary to abate the nuisance. Abatement under this section shall not commence until at least 10 days after the service of the order, except that the Code Enforcement Officer may determine that more immediate action is required because of the special emergency or dangerous conditions which exist.

§ 36-19. Recovery of expenses.

- A. The expenses incurred pursuant to § 36-18 of this chapter and of the other applicable codes and ordinances shall be paid by the responsible owner, operator or occupant or by the persons who caused or maintained such a public nuisance.
- B. The Code Enforcement Officer shall file, in his records, an affidavit stating with fairness and accuracy the items and date of the expenses incurred. The Borough Council of the municipality may institute a suit to recover such expenses to be charged against the property as a lien.

ARTICLE VI
Hearing Board; Variances; Appeals

§ 36-20. Establishment of Board.

There is hereby established a Code Hearing Board appointed by the Borough Council of the municipality, consisting of no fewer than three members nor more than five members, who shall serve without compensation but may be reimbursed for necessary reasonable expenses. Their terms of office shall be for three years, except for those first appointed, so fixed that the term of office of at least one member shall expire each year. Appointments to fill vacancies shall be only for the unexpired portion of the term.

§ 36-21. Powers and duties of Board.

The Code Hearing Board shall have the following powers and duties:

- A. Interpretation. On appeal from a determination of the Code Enforcement Officer or on request of any municipal official, the Code Hearing Board shall decide any questions involving the interpretation of any provision of this chapter or of those other applicable codes and ordinances.
- B. Variances. The Code Hearing Board may grant a variance from the strict application of this chapter or of those other applicable codes and ordinances. Such variances may be granted only in those cases which would result in practical difficulty or unnecessary hardship and where the public health and safety shall not be jeopardized.
- C. Decide appeals. The Code Hearing Board shall hear all appeals made to it and, depending on its findings, shall decide whether such appeals shall be granted.

§ 36-22. Request for appeals or variances.

Any person requesting a variance or aggrieved by a decision of the Code Enforcement Officer, or by another employee or official charged with the administration and enforcement of this chapter and of those other applicable codes or ordinances, may take an appeal to the Code Hearing Board. All appeals must be made in writing, stating the grounds upon which the appeal is based, and shall be transmitted to the Office of Code Enforcement. An appeal must be taken within 15 days of the action or of the receipt of written notice of any decision or ruling which is being appealed.

§ 36-23. Procedure.

- A. Public hearing. The Code Hearing Board shall meet and conduct a hearing within 45 days of the receipt of an appeal or a request for a variance. All hearings shall be public, and persons whose interests may be affected shall be given an opportunity to be heard. A record shall be kept of all evidence and testimony presented at the hearing.
- B. Decision of the Board. All decisions of the Board shall be in writing, and a copy of each decision shall be sent to the applicant and to the Code Enforcement Officer. The Code Hearing Board shall also retain in its files a copy of each decision, which files shall be available for inspection by the public. Each decision shall set forth fully the reasons for the decision of the Code Hearing Board and the findings of fact on which the decision was based. The Code Hearing Board shall make an order on its decision, and the Code Enforcement Officer shall take immediate action to carry out said order.

§ 36-24. Appeal of Board decision.

Any person or persons aggrieved by any final order or decision of the Code Hearing Board may appeal such order or decision, within 30 days, to the Court of Common Pleas in accordance with, as far as practicable, the Rules of Civil Procedure of the Supreme Court regarding appeals from administrative agencies.

§ 36-25. Report from Board.

The Code Hearing Board shall report to the Burgess and Town Council periodically, at intervals of not later than 12 months. The report shall summarize all applications and appeals made to it since the last report and shall contain a summary of the Board's decision on each case. A copy of the report shall be filed with the Code Enforcement Officer. The Code Hearing Board may also submit to the Burgess and Town Council advisory reports recommending changes and modifications in this chapter or in those other applicable codes or ordinances.

ARTICLE VII
General Provisions

§ 36-26. Construal of provisions.

Nothing in this chapter shall be construed to affect any suit or proceeding now pending in any court, or any actions required or liability incurred, or any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. No right or remedy of any character shall be lost, impaired or affected by this chapter.

§ 36-27. Severability.

The invalidity of any section or provision of this chapter shall not invalidate other sections or provisions thereof.

§ 36-28. Repealer.

Any ordinance or part of any ordinance conflicting with the provisions of this chapter be and the same is hereby repealed insofar as the same affects this chapter.

§ 36-29. Title.

This chapter shall be known and may be cited as the "Code Enforcement Ordinance of the Municipality."