

BOROUGH OF CLARKS SUMMIT

LACKAWANNA COUNTY, PENNSYLVANIA

ORDINANCE NO. 2009-02

AN ORDINANCE OF THE BOROUGH OF CLARKS SUMMIT TO PROVIDE FOR THE USE OF FIRE INSURANCE PROCEEDS FOR THE PAYMENT OF DELINQUENT TAXES, ASSESSMENTS, PENALTIES AND USER CHARGES, AND FOR THE REMOVAL, REPAIR OR SECURING OF FIRE DAMAGED BUILDINGS, AND TO ESTABLISH PENALTIES FOR VIOLATIONS.

Be it ENACTED and ORDAINED by the Council of the Borough of Clark Summit, County of Lackawanna, State of Pennsylvania, and it is hereby Enacted and Ordained by with the authority thereof as follows and to be included in the Code of ordinances of the Borough of Clarks Summit as Chapter 10, Part 4.

Chapter 10

Part 4

Fire Insurance Proceeds

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§ 10-401 Legislative intent and legal authority.

The background of this Ordinance and the legislative intention of the Borough Council in enacting it are as follows:

- A. The Borough of Clarks Summit is a municipal corporation organized under the Pennsylvania Borough 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 Borough Council intends to insure 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 the Borough of Clarks Summit.
- D. The Borough Council desires to insure the payment of costs incurred by the Borough 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 the Borough of Clarks Summit.

- 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 the urban blight and deterioration.
- F. The Borough Council 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 Borough not be borne by it, nor be paid out of its financial resources.

§ 10-402 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.

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 Borough of Clarks Summit 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 Borough of Clarks Summit.

MUNICIPALITY - The Borough of Clarks Summit.

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 areas.

TREASURER - The Treasurer of the Borough of Clarks Summit.

§ 10-403 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.

§ 10-404 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 Treasurer 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 fourteen (14) working days of the request:
 - 1. A certificate, or at the discretion of the Borough of Clarks Summit, 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 the Borough of Clarks Summit 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 Treasurer and transfer to the Treasurer 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 Borough of Clarks Summit 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 the Borough of Clarks Summit to recover any deficiency.

§ 10-405 Multiple insurers or multiple policies.

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

§ 10-406 Additional procedures and regulations by resolution.

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

§ 10-407 Prohibition on payment of claims.

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

§ 10-408 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 Treasurer 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 fourteen (14) working days of the request:
1. A certificate or, at the discretion of the Borough of Clarks Summit, 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 Treasurer's certificate or verbal notification, the Borough of Clarks Summit has not certified any amount as total costs incurred by the Borough 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 Treasurer's certificate, the amount of the total costs, if any, certified to the Treasurer that have been incurred by the Borough of Clarks Summit for the removal, repair or securing of a building or other structure on the

property. For the purposes of this clause, the Borough of Clarks Summit shall provide to the Treasurer the total amount, if any, of such costs, if available, or the amount of costs known to the Borough at the time of the Treasurer's certificate.

§ 10-409 Transfer of proceeds.

After full compliance with the requirements of §10-408 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 sixty (60) percent 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 Treasurer the aggregate of \$2,000 for each \$15,000 of 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 the Borough of Clarks Summit shall be \$2,000.
 - 2. That, if at the 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 the Borough of Clarks Summit 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 the Borough of Clarks Summit shall be disbursed in accordance with the policy terms.

§ 10-410 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 Treasurer shall return to the named insured the amount of the funds transferred to the Borough of Clarks Summit in excess of the estimate, provided that the Borough of Clarks Summit has not commenced to remove, repair or secure the building or other structure.

§ 10-411 Escrow of proceeds.

Upon the receipt of proceeds under this Ordinance, the Borough of Clarks Summit shall do the following:

- A. The Treasurer shall place the proceeds in a separate fund to be used solely as security against the total costs which are incurred by the Borough of Clarks Summit for removing, repairing or securing the building or structure. Such costs shall include, without limitation, any engineering, legal or administrative costs incurred by the Borough of Clarks Summit in connection with such removal, repair or securing of the building or any proceedings related thereto.
- B. At the time of transfer of such proceeds, the insurer shall provide the Borough of Clarks Summit 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 Treasurer shall contact the named insured, certify that the proceeds have been received by the Borough of Clarks Summit 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 the Borough of Clarks Summit and the required proof of such completion received by the Treasurer and if the Borough of Clarks Summit has not incurred any costs for repairs, removal or securing, the fund shall be returned to the named insured. If the Borough of Clarks Summit 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 Borough of Clarks Summit shall transfer the remaining funds to the named insured.

D. To the extent that interest is earned on proceeds held by the Borough of Clarks Summit pursuant to this section, and retained by it, such interest shall belong to the Borough of Clarks Summit. 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.

§ 10-412 Deficiencies.

Nothing in this Ordinance shall be construed to limit the ability of the Borough of Clarks Summit to recover any deficiency. Furthermore, nothing in this Chapter shall be construed to prohibit the Borough of Clarks Summit 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.

§ 10-413 Additional procedures and regulations by resolution.

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

§ 10-415 Violations and penalties.

Any owner of any property and named insured or insurer of any person, firm or corporation who shall violate any provision of this Ordinance or who shall fail to comply with any of the requirements hereof, upon conviction thereof in an action brought before the District Magisterial Judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$200 and not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Each day that a violation of this Ordinance continues or each section of this Ordinance which shall be found to have been violated shall constitute a separate offense.

SEVERABILITY

Should any section, subsection, clause, provision or other portion of this Ordinance be declared invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance; the Borough Council having adopted this Ordinance as if such invalid portions had not been included therein.

EFFECTIVE DATE

This Ordinance shall become effective five (5) days following its adoption.

ADOPTION

ORDINANCE ORDAINED AND ENACTED this ____ day of _____, 2009, by the Borough Council of the Borough of Clarks Summit, Lackawanna County, Pennsylvania.

BOROUGH OF CLARKS SUMMIT By: _____, Council President

ATTEST: _____, Secretary

APPROVED this ____ day of _____, 2009 By: _____, Mayor