

ORDINANCE NO. 7 of 2011

**AN ORDINANCE AMENDING THE TOWNSHIP CODE OF ORDINANCES  
ADDING CHAPTER 79 TO IMPLEMENT PA ACT NO. 90-2010**

**Chapter 79  
IMPLEMENTATION OF PA ACT NO. 90-2010**

---

**§79-1. Short Title.**

**§79-2. Purpose.**

**§79-3. Definitions.**

**§79-4. Actions Against Owner of Property with Serious Code Violations.**

**§79-5. Denial of Permits.**

**§79-6. Miscellaneous.**

---

**§79-1. Short Title.**

This Ordinance may be cited as the "Foster Township Neighborhood Blight Reclamation and Revitalization Ordinance."

**§79-2. Purpose.**

The purpose of this Chapter is to:

- A. Implement in Foster Township the provisions of the Act of October 27, 2010 (P.L., No. 90), 53 Pa.C.S. Ch. 61, known as the Neighborhood Blight Reclamation and Revitalization Act.
- B. Prohibit deteriorated properties located in the Township as a result of neglect by their owners in violation of applicable State and municipal codes.
- C. Prevent the expending of public funds in order to abate or correct deteriorated properties, which create public nuisances that have an impact on crime and the quality of life of the Township residents.
- D. Permit the denial of certain governmental permits and approvals in order:
  - (1) 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.
  - (2) To reduce the likelihood that the Township and other municipalities will have to address the owners' neglect and resulting deteriorated properties.

- (3) To sanction the owners for not adhering to their legal obligations to the Township, as well as to tenants, adjoining property owners and neighborhoods.

### **§79-3. Definitions.**

The following words and phrases when used in this Part shall have the meanings given to them unless the context clearly indicates otherwise:

“Act” means the act of October 27, 2010 (P.L., No. 90), 53 Pa.C.S. Ch. 61, known as the Neighborhood Blight Reclamation and Revitalization Act.

“Building” means a residential, commercial or industrial building or structure and the land appurtenant to it.

“Code” means a building, housing, property maintenance, fire, health or other public safety ordinance enacted by the Township. The term does not include the Township Subdivision and Land Development Ordinance or the Township Zoning Ordinance, as enacted and amended.

“Code Official” means the official of the Township authorized to administer and enforce the Township Codes, including the Zoning Officer, Code Enforcement Officer or a Police Officer.

“Court” means the Court of Common Pleas of Luzerne County, Pennsylvania.

“Mortgage Lender” means 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” means a city, Township, incorporated town, township or home rule, optional plan or optional charter municipality or municipal authority in this Commonwealth and any entity formed pursuant to the act of Dec. 19, 1996 (P.L. 1158, No. 177), § 1, 53 Pa.C.S. Ch. 23 (relating to intergovernmental cooperation).

“Municipal Permits” means privileges relating to real property granted by the Township that are building permits, zoning permits, special exceptions, variances and conditional uses granted under the Township’s Zoning Ordinance, the Landlord Tenant Ordinance, or any occupancy permit ordinance, as well as any other ordinance authorizing a municipal permit affecting real property including for which the Township desires to deny permits under this Part. The term does not include decisions on the substantive validity of a zoning ordinance or map such a validity variance or the acceptance of a curative amendment.



"Owner" means 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, including lessees under leases for which a memorandum of lease is recorded in accordance with the act of June 2, 1959 (P.L. 254 (vol. 1), No. 86), 21 P.S. § 405.

"Public Nuisance" means property which, because of its physical condition or use, is regarded as a public nuisance at common law or has been declared by the Township or an official of the Township to be a public nuisance in accordance with International Property Maintenance Code.

"Remediation Plan" means a plan for the correction of violations of state law or codes that are a part of an agreement between the owner and the municipality in which the real property containing the violations is located.

"Serious Violation" means a violation of state law or code that poses an imminent threat to the health and safety of a dwelling occupant, occupants in surrounding structures or a passersby, that is a building ordered vacated in accordance with the Department of Labor and Industry's Regulations, 34 Pa. Code § 403.84, as amended, implementing the Uniform Construction Code, the act of November 10, 1999 (P.L. 491, No. 45), as amended, 35 P.S. §§7210.101 to 7210.1103; a building placarded as unfit for human habitation so as to prevent its use under the Township's Property Maintenance Code; or a vacant building whose exterior violates Section 304 of the 2009 ICC Property Maintenance Code, or any successor statute, regulation or property maintenance code.

"State Law" means a statute of the Commonwealth of Pennsylvania or a regulation of an agency charged with the administration and enforcement of law.

"Substantial Step" means an affirmative action as determined by a property codes 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" means tax delinquent real property as defined under:  
(1) the act of July 7, 1947 (P.L. 1368, No. 542), known as the Real Estate Tax Sale Law;  
(2) the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Act;  
(3) 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;  
or  
(4) or any successor law to any of the above statutes.

"Township" means Foster Township, a second class township or political subdivision, located in Luzerne County, Pennsylvania.



"Uniform Construction Code" means the act of November 10, 1999 (P.L. 491, No. 45), as amended, 35 P.S. §§7210.101 to 7210.1103 as adopted and implemented by the Township Code of Ordinances.

**§79-4. Actions Against Owner of Property with Serious Code Violations.**

- A. Actions. In addition to any other remedy available at law or in equity, the Township 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:
- (1)(i) 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.
  - (ii) As authorized by the Act, the Township reserves the right to 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 municipality to remedy any code violation.
  - (2) A proceeding in equity.
- B. Asset Attachment.
- (1) General rule.--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 79-4(A) above (relating to actions).
  - (2) Limitations under the Act.--In proceedings under the Act, except as otherwise allowed by law, where the owner is an association or trust, no lien shall be imposed upon the individual assets of any limited partner, shareholder, member or beneficiary of the owner.
- C. Reservation of rights and remedies under law other than the Act. The Township reserves all rights and remedies existing under statutes other than the Act, its ordinances implementing them, and applicable case law to obtain recovery for the costs of preventing and abatement of code violations and public nuisances to the fullest extent allowed by law from mortgage lenders; trustees, and members of liability companies, limited partners who provide property management services to the real property as well as general partners of owners; and officers, agents, and operators that are in control of a property as an owner or otherwise hold them personally responsible for code violations as well as owners themselves. Such owners, mortgage lenders, partners, members of limited liability companies, trustees, officers, agents and operators in control of a real property with code violations shall be subject to all actions at law and in equity to the full extent authorized by such statutes, ordinances and applicable case law. Such action may



be joined in one lawsuit against responsible parties with an action brought under the Act.

**§79-5. Denial of Permits.**

**A. Permit Application Form.**

- (1) In addition to the requirements set forth in the governing ordinance, regulations or rules for the specific municipal permit being applied for, under the ordinances referenced in the definition of "municipal permit" in Section 79-3 above, all applications for a municipal permit shall include:
  - (a) If the owner is an individual, the home address of the owner.
  - (b) If the owner is an entity, its registered office and principal place of business, type of entity, in what state it was formed, and whether the entity has qualified to do business as a foreign entity in Pennsylvania by filing with the Corporation Bureau of the Pennsylvania Department of State under title 15 of the Pennsylvania Consolidated Statutes. The home address of at least one responsible officer, member, trustee, or partner shall also be included.
  - (c) The applications shall also include a provision requiring the owner to disclose real properties owned by the owner both inside of the Township as well as in all other municipalities of the Commonwealth:
    - (i) in which there is a serious violation of State law or a code and the owner has taken no substantial steps to correct the violation within six months following notification of the violation
    - (ii) 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;
    - (iii) and real property owned in the Commonwealth by the owner for which there is a final and unappealable tax, water, sewer or refuse collection delinquency on account of the actions of the owner. This provision shall require the owner to disclose the street address, tax parcel number, municipality, and county of each such real property. The provision shall require the disclosure be under penalty as provided in 18 Pa.C.S. § 4904(a) for an unsworn falsification to a government officer or employee (public servant) performing official functions.
- (2) All applicants for a municipal permit shall accurately complete the Permit Applicant Disclosure Form as from time-to-time adopted by Resolution of the Board of Supervisors subject to a penalty as described in 18 Pa.C.S. § 4904.



## B. Municipal Permit Denials and Appeals.

### (1) Permit Denial.

- (a) A codes official, or the Zoning Hearing Board under Subsection (f) below, may deny issuing to an applicant a municipal permit if the applicant owns real property in any municipality for which there exists on the real property:
  - (i) a final and unappealable tax, water, sewer or refuse collection delinquency on account of the actions of the owner; or
  - (ii) a serious violation of State law or a code and the owner has taken no substantial steps to correct the 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 municipality seeking to deny a municipal permit.
- (b) A codes official or the Zoning Hearing 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, provided all other conditions for the issuance of a municipal permit have been met.
- (c) 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.
- (d) 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 code official or board shall issue the denial in writing and 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 the Act. The denial shall be delivered by U.S. Certified, Registered, or Express Mail, Return Receipt Requested and such receipt is obtained or delivery refused;



personal service in manner provided by the Pennsylvania Rules of Court for Civil Procedure for original process; hand delivery by a member of the codes enforcement staff; or a private delivery service that provides for a receipt and such receipt is obtained or delivery refused.

- (e) The information on the real property forming the basis for a municipal permit denial may be obtained by a codes official, or other employee or agent of the Township from the information disclosed by the owner in accordance with Subsection (a) above, or any other reliable information obtained through a search of records using governmental systems online or through direct contact with the office maintaining the systems such as the court docket systems maintained by the Administrative Office of the Pennsylvania Courts, county/city department of records, offices of the recorder of deeds, municipal and county tax collectors and treasurers, county tax claim bureaus, prothonotary and clerk of court, private online fee based search services, and free searches on the Internet. Prior to making a determination on whether to deny a municipal permit, a codes official or Zoning Hearing Board using the services of the Zoning Officer or other municipal staff or contracted service provider may conduct a search using the sources described in this Subsection (e).
- (f) Zoning Hearing Board
  - (i) Municipal permits may be denied by a board in accordance with the requirements of this section to the extent that approval of the municipal permit is within the jurisdiction of the board. For purposes of this section, "board" shall mean the Township Zoning Hearing Board granted jurisdiction to render decisions in accordance with the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code.
  - (ii) In any proceeding before a board other than the governing body of the municipality, the municipality may appear to present evidence that the applicant is subject to a denial by the board in accordance with this section.
  - (iii) 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 satisfying the conditions of Subsection Section 79-5B(1)(a) above.

- (iv) Applicability of other law.--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.
- (g) The codes official or Zoning Hearing Board shall review the Disclosure Form and the searches, if any, in accordance with Subsection (e) above prior to any plan or construction reviews or inspections to determine if such a review or inspection is unnecessary due to a municipal permit being denied under this Subsection (b) above.
- (h). Right of appeal. The owner shall have a right to appeal the denial of a municipal permit in accordance with the applicable law governing such municipal permit. In the case of a denial by a codes official, the appeal shall be made within 30 days of the denial to the Board of Appeals established under the Uniform Construction Code. In case of a denial by the Township Zoning Hearing Board, the appeal shall be to the Court of Common Pleas.
- (i) With respect to a denial under the grounds authorized by the Act, the denial may only be reversed for the following reasons:
  - (A) An authentic proof of compliance letter.
  - (B) Evidence of substantial steps taken to remedy a serious violation set forth on the denial confirmed by an order of the Court or the codes official.
  - (C) Evidence of an approved remedial plan to address a serious violation set forth on the denial.
  - (D) Evidence of a timely appeal or administrative contest of a tax, water sewer, or refuse collection delinquency.
  - (E) A failure of a state agency, school district or municipality to issue a proof of compliance within 45 days of a request.
  - (F) A failure of a state agency or municipality to provide the relief required under section 6144 of the Act to an heir or devisee.
  - (G) Any other verifiable evidence that establishes by a preponderance of the evidence that a serious violation or collection delinquency of tax, water, sewer, or refuse accounts does not exist.



- (ii) With respect to denials for reasons other than those authorized by the Act, the provisions of the Uniform Construction Code or applicable zoning law shall govern.

The owner shall be informed of the right, time and place to make an appeal.

- (iii) Proof of compliance.--

- (A) All municipal permits denied in accordance with this subsection shall be withheld until an applicant obtains a letter from the appropriate State agency, municipality or school district indicating the following:

- (i) the property in question has no final and unappealable tax, water, sewer or refuse delinquencies;
- (ii) the property in question is now in State law and code compliance; or
- (iii) 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 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. 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.

- (B) 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, provided a copy of the request has been delivered to the municipality where the municipal permit has been applied for in accordance with this Ordinance. The appropriate State agency, municipality or school district shall specify the form in which the request for a compliance letter shall be made.



- (C) Letters required under this section shall be verified by the appropriate municipal officials before issuing to the applicant a municipal permit.
- (D) An owner seeking to obtain a proof of compliance in order to obtain a municipal permit that would otherwise be denied shall submit a copy of the owner's request for proof of compliance within five days of the date that request is sent to the appropriate State agency, municipality or school district, to the municipality from which a municipal permit is sought or submit the copy of the request with the application for the municipal permit if such application is made at a later date.

**§79-6. Miscellaneous.**

**A. Conflict with other law.**

In the event of a conflict between the requirements of this Ordinance 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.

**B. 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 plan in accordance with Section 6131(b)(1)(iii) of the Act and Section 79-5.B(2)(a)(iii) (relating to municipal permit denial) with the Township 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.

**C. Repealer.**

All ordinances or parts of ordinances in conflict herewith be and are hereby repealed, except any ordinance or parts of ordinances that authorize greater remedies than this Ordinance are preserved.

**D. Severability.**

The provisions of this Ordinance shall be severable and if any of its provisions are found to be unconstitutional or illegal the validity of any of the remaining provisions of this Ordinance shall not be affected thereby.



E. Effective Date.

This Ordinance shall take effect immediately upon its adoption, the date being indicated below.

**ENACTED AND ORDAINED** this 14 day of September, 2011, by the Foster Township Board of Supervisors.

ATTEST:

FOSTER TOWNSHIP BOARD OF  
SUPERVISORS

BY:

Gerald Brogan

Gerald Brogan, Chairperson

Michael Spock

Michael Spock, Supervisor



Georgiann Eckrote-Jones  
Georgiann Eckrote-Jones, Secretary

APPENDIX 1  
Permit Applicant Disclosure Form

The following paragraph shall be added to Permit Applications to comply with this Ordinance.

The owner/applicant under penalty as provided in 18 Pa.C.S. § 4904(a) for an unsworn falsification to a public servant such as the Codes Enforcement Officer or Zoning Officer of the Township of Foster, swears or affirms that the owner/applicant owns no real property in which there is a serious violation of State law or a municipal code and for which the owner has taken no substantial steps to correct the 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, or a final and unappealable tax, water, sewer or refuse collection delinquency on account of any action of the owner with respect to any real property owned by the owner/applicant in the Commonwealth, except as follows:

[Insert word "NONE" and initial if there are no such properties, but if there are such properties list the street addresses of such properties, their tax parcel numbers, and the municipalities and counties in which such properties are located.]

In order to avoid a municipal permit denial, an owner may seek a proof of compliance letter from the municipal where tax, water, sewer or refuse collection delinquency existed but is now satisfied or where there is a serious code violation that has been timely abated or the owner has entered into a remediation plan with the municipality where the real property is located.