

## ORDINANCE NO. 02-2021

### AN ORDINANCE AUTHORIZING THE BOARD OF COMMISSIONERS OF THE COUNTY OF BERKS TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT TO ESTABLISH THE BERKS COUNTY UNIFORM CONSTRUCTION CODE BOARD OF APPEALS IN COOPERATION WITH PARTICIPATING MUNICIPALITIES WITHIN THE COUNTY

#### BACKGROUND

A. A majority of the townships and boroughs in Berks County have enacted ordinances adopting the Uniform Construction Code (“UCC”), Act 45 of 1999, 35 P.S. §§ 7210.101, et seq. (the “Act”).

B. Section 301 of the Act directed the Pennsylvania Department of Labor and Industry to promulgate regulations with respect to the administration and enforcement of the Act, which regulations were codified at Title 34 Pa.Code, Chapters 401, 403 and 405 (“Regulations”).

C. Section 403.121(d) of the Regulations, 34 Pa.Code § 403.121(d), as authorized by Section 501(c) of the Act, 35 P.S. § 7210.501(c), provides that two or more municipalities may establish a joint board of appeals through an intergovernmental agreement adopted under the authority of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S. §§ 2301, et seq.

D. Under Section 2303 of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S. § 2303, two or more local governments may enter into an intergovernmental cooperation agreement, as deemed appropriate, in the exercise or performance of their respective governmental functions, power or responsibilities.

E. Certain municipalities desire to enter into an intergovernmental agreement (“Agreement”) to establish the Berks County UCC Board of Appeals in cooperation with the County of Berks, to hear and rule on appeals, requests for variances and requests for extension of time as may be filed within each such municipality under the respective municipality’s UCC ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Commissioners of the County of Berks, Pennsylvania, as follows:

Section 1. The Title and Background of this Ordinance set forth above are incorporated herein by reference.

Section 2. The Board of Commissioners of the County of Berks (“Commissioners”) hereby approve entering into the Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (and which shall be filed with the minutes of the meeting at

which this Ordinance was enacted), with the intent and effect that the County of Berks (“County”) shall be bound by the Agreement.

Section 3. The Chairperson of the Commissioners is hereby authorized and directed on behalf of the County: (i) to execute and deliver the Agreement; and (ii) to execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry forth the Agreement and the transactions to be effected under the Agreement, including acceptance of payment of the participation fee as may be due by the participating municipalities to administer the Agreement.

Section 4. All actions of any officer, agent or other representative of the County heretofore taken in the pursuit of the establishment of the UCC Board of Appeals and/or the County’s participation therein are hereby ratified and approved in all respects.

Section 5. The Commissioners are hereby authorized to take such other action as may be necessary or appropriate to carry out the purposes of this Ordinance and of the Agreement.

Section 6. As required by the Pennsylvania Intergovernmental Cooperation Act, the following matters are specifically found and determined:

- (a) The conditions of the Agreement are set forth in the Agreement.
- (b) The participating municipalities shall utilize the UCC Board of Appeals for all appeals filed from application of the participating municipalities for the term as set forth in the Agreement.
- (c) The purpose and objectives of the Agreement are as set forth in the Background of this Ordinance and in the Agreement.
- (d) The manner and extent of financing the Agreement are that: (i) no borrowing will be required by the County; (ii) funds to implement the County’s obligations under the Agreement shall come from the payment of the participation fee by the participating municipalities and from the payment of filing fees by applicants for appeal; and (iii) other provisions governing the manner and extent of the financing of the UCC Board of Appeals shall be as set forth in the Agreement;
- (e) The UCC Board of Appeals shall be managed by its members pursuant to the terms of the Agreement.
- (f) All property, real or personal, of the UCC Board of Appeals shall be acquired, managed, licensed or disposed of by the UCC Board of Appeals in accordance with the terms of the Agreement.
- (g) The UCC Board of Appeals will not be entering into any contracts.

Section 7. Nothing contained in this Ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired or liability incurred, or any cause of action existing prior to the enactment of this Ordinance.

Section 8. This Ordinance shall become effective as provided by applicable law.

ENACTED AND ORDAINED, this 15<sup>th</sup> day of April, 2021, by the Board of Commissioners of the County of Berks, Pennsylvania.

COUNTY OF BERKS

Attest: Maryjo Gibson  
Maryjo Gibson, Chief Clerk

Christian Y. Leinbach  
Christian Y. Leinbach, Chair  
Kevin S. Barnhardt  
Kevin S. Barnhardt, Commissioner  
Michael S. Rivera  
Michael S. Rivera, Commissioner

(SEAL)



EXHIBIT A  
Intergovernmental Cooperation Agreement

**INTERGOVERNMENTAL AGREEMENT FOR THE  
ESTABLISHMENT OF THE BERKS COUNTY  
UNIFORM CONSTRUCTION CODE BOARD OF APPEALS**

**THIS INTERGOVERNMENTAL AGREEMENT** ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among Berks County, Pennsylvania ("County") and the undersigned Boroughs and Townships of Berks County.

**BACKGROUND**

A. Certain townships and boroughs in Berks County have enacted ordinances adopting the Uniform Construction Code ("UCC"), Act 45 of 1999, 35 P.S. § 7210.101, et seq. (the "Act").

B. Section 301 of the Act directed the Pennsylvania Department of Labor and Industry to promulgate regulations with respect to the administration and enforcement of the Act, which regulations were codified at Title 34 Pa.Code, Chapters 401, 403 and 405 ("Regulations").

C. Section 403.121(d) of the Regulations, 34 Pa.Code § 403.121(d), as authorized by Section 501(c) of the Act, 35 P.S. § 7210.501(c), provides that two or more municipalities may establish a joint board of appeals through an intergovernmental agreement adopted under the authority of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S. § 2301, et seq.

D. Under the Pennsylvania Intergovernmental Cooperation Act, a municipality may enter into an intergovernmental cooperation agreement upon the passage of an ordinance by its governing body.

E. Certain boroughs and townships located in Berks County (individually, "Participating Municipality" and collectively, "Participating Municipalities") desire to enter into an intergovernmental agreement ("Agreement") in cooperation with the County to establish the Berks County Uniform Construction Code Board of Appeals, to hear and rule on appeals, requests for variances and requests for extension of time as may be filed under each Participating Municipality's UCC ordinance.

NOW, THEREFORE, based on the foregoing and pursuant to the authority of the Pennsylvania Intergovernmental Cooperation Act, as amended, the County and the Participating Municipalities agree and intend to be legally bound as follows:

**SECTION 1. ESTABLISHMENT OF THE BOARD OF APPEALS**

1.1 The Berks County Board of Commissioners, in cooperation with the governing bodies of the Participating Municipalities, hereby establishes the Berks County Uniform Construction Code Board of Appeals ("Board").

- 1.2 By enactment of an ordinance authorizing execution of this Agreement, the Participating Municipalities hereby designate the Board as the body to hear and rule on appeals, requests for variances, and requests for extensions of time brought under the codes and standards promulgated in the most current version of the Act, as may be amended and adopted by a Participating Municipality from time to time.

**SECTION 2. PURPOSE**

- 2.1 The purpose of the Board is to hear and rule on appeals, requests for variances, and requests for extensions of time under the Act.

**SECTION 3. ORGANIZATION**

- 3.1 The Board shall consist of five (5) members.
- 3.2 Subject to Section 3.8 below, members of the governing body of a Participating Municipality and its building code official may serve on the Board, provided they shall not serve in any matter in which their municipality is a party or in any matter for which there is a substantial risk the Board member's duty to serve fairly and impartially will be materially limited by the Board member's duty to the municipality where he or she serves on the governing body or as its building code official.
- 3.3 A member of the Board shall be qualified by training and experience to pass on matters pertaining to building construction. Training and experience may consist of licensure as an architect or engineer, experience in the construction industry, or training or experience as an inspector or plan reviewer.
- 3.4 A member of the Board is appointed by and holds office at the discretion of the Berks County Board of Commissioners.
- 3.5 The Board shall hold an annual organizational meeting, in person or by virtual means, at which it shall elect a Chairman and Vice Chairman. The Chairman or Vice Chairman shall have the authority to call the Board into a special session.
- 3.6 The Secretary to the Board shall be the Berks County Planning Commission Director or the Director's designee.
- 3.7 The County Board of Commissioners may fill a position on the Board with a qualified person who resides outside of the County when it cannot find a person within the County who satisfies the requirements of Section 3.3.



- 3.8 A member of the Board may not cast a vote or participate in a meeting or hearing in any appeal, request for variance or request for extension of time in which the member has a personal, professional or financial interest, or where such participation may otherwise constitute a conflict of interest within the meaning of the State Ethics Act.
- 3.9 The Board shall schedule meetings and hearings and provide public notice of meetings and hearings in accordance with the Pennsylvania Sunshine Act, 65 Pa.C.S. § 701, *et seq.*, as amended.
- 3.10 The Board may not act on appeals, requests for variance or requests for extension of time relating to accessibility. See Section 4.11 below.
- 3.11 The Board may, as it deems necessary, hire legal, architectural, engineering or other professional consultants.
- 3.12 Each Participating Municipality shall pay an annual subscription fee in an amount as may be determined by resolution of the Board from time to time. Checks shall be made payable to the County Treasurer. Any Participating Municipality that fails to pay the annual subscription fee shall be required to withdraw from this Agreement and appeals and requests for variance and extensions of time from such Participating Municipality shall not be heard by the Board.
- 3.13 The required filing fee for an appeal or request for variance or extension of time shall be established from time to time by resolution of the Board.
- 3.14 From time to time, the Board may establish rules and procedures for the conduct of hearings its business.

**SECTION 4. APPEALS, REQUESTS FOR VARIANCE AND EXTENSIONS OF TIME**

- 4.1 An owner or owner's agent may seek a variance or extension of time or appeal a decision of a Participating Municipality's building code official by filing with the Board Secretary an appeal form available from the office of the Berks County Planning Commission or the Participating Municipality ("Appeal Form").
- 4.2 The postmark date or the date of personal service of the Appeal Form on the Board Secretary, together with receipt of the filing fee, will establish the filing date of the appeal, or request for variance or extension of time.
- 4.3 The filing of an appeal or request for variance or extension of time to the Board will automatically suspend an action to enforce an order to correct issued by the building code official until the matter is resolved; provided,

however, an action under Section 403.84 of the Regulations, 34 Pa.Code § 403.84 (relating to unsafe building, structure or equipment) may not be stayed.

- 4.4 The Board shall decide an appeal, request for variance or extension of time by reviewing the Appeal Form, accompanying documents, evidence presented at the hearing, and the written brief of argument, if any.
- 4.5 The Board shall schedule a hearing and notify the owner or owner's agent and Participating Municipality's building code official of the date, time and place of the hearing. The hearing may be held by virtual means. The Board shall hold the hearing within 60 days from the filing date of the Appeal Form unless the owner or owner's agent agrees in writing to an extension of time for the hearing.
- 4.6 All hearings shall be held in accordance with the Local Agency Law, 2 Pa.C.S. § 551, *et seq.*
- 4.7 The Board shall only consider the following factors when deciding an appeal under Section 501 (c) (2) of the Act:
  - 4.7.1 The true intent of the Act or the Regulations was incorrectly interpreted.
  - 4.7.2 The provisions of the Act do not apply.
  - 4.7.3 An equivalent or better form of construction is to be used.
- 4.8 The Board may consider the following factors when ruling on a request for extension of time:
  - 4.8.1 The reasonableness of the application of the Act or the Regulations in a particular case.
  - 4.8.2 The extent to which the granting of an extension of time will pose a violation of the Act or the Regulations or an unsafe condition.
  - 4.8.3 The availability of professional or technical personnel needed to come into compliance.
  - 4.8.4 The availability of materials and equipment needed to come into compliance.
  - 4.8.5 The efforts being made to come into compliance as quickly as possible.



- 4.8.6 Compensatory features that will provide an equivalent degree of protection to the Act and/or the Regulations.
- 4.9 The Board may:
  - 4.9.1 Deny the appeal or request in whole or in part.
  - 4.9.2 Grant the appeal or request in whole or in part
  - 4.9.3 Grant the appeal or request upon certain conditions being satisfied.
- 4.10 The Board shall provide a written notice of its decision to the owner and to the Participating Municipality's building code official and any other party requiring notice.
- 4.11 Appeals and requests for extension of time relating to accessibility shall be filed with the Accessibility Advisory Board under Section 403.142 of the Regulations, 34 Pa.Code § 403.12 (relating to Accessibility Advisory Board).
- 4.12 An owner desiring to appeal the decision of the Board shall do so to the Berks County Court of Common Pleas within thirty (30) days of the date of the written decision.

**SECTION 5. EFFECTIVE DATE**

- 5.1 The effective date of this Agreement between the County and a Participating Municipality shall be the effective date of an ordinance authorizing the execution of this Agreement by the Participating Municipality (the "Effective Date").

**SECTION 6. PREVIOUS AGREEMENTS**

- 6.1 Any previous agreements between the County and a Participating Municipality regarding the Board are terminated as of the Effective Date.

[Signature page follows]

ATTEST:

COUNTY OF BERKS, PENNSYLVANIA

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_ TOWNSHIP, BERKS  
COUNTY, PENNSYLVANIA

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_ BOROUGH, BERKS  
COUNTY, PENNSYLVANIA

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President