

Upon motion by Richard P. Figaski, seconded by Brian P. McGrath, the following Ordinance was duly enacted, 2 voting in favor of enactment, 0 voting against enactment.

ORDINANCE NO. 2013-13

An Ordinance of the Township of Millcreek adopting with certain amendments the 2009 edition of the International Fire Code, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the Township of Millcreek, providing for the issuance of permits and collection of fees therefor; providing for administration and enforcement; establishing violations and imposing penalties for violation; and containing severability and repealor clauses.

WHEREAS, by Ordinance No. 92-6, Millcreek Township adopted the 1990 BOCA Fire Prevention Code as the Fire Code of Millcreek Township; and

WHEREAS, Millcreek Township by ordinance has provided for adoption and enforcement of the Pennsylvania Construction Code Act which establishes standards for construction of new structures and buildings; and

WHEREAS, the Pennsylvania Construction Code currently includes the 2009 edition of the International Fire Code with certain exclusions, said Code thereby being pertinent to administration and enforcement of regulations governing new construction activities under the Construction Code; and

WHEREAS, the Board of Supervisors has determined that it is in the best interests of the public safety and general welfare that Millcreek Township adopt a more current version of the International Fire Code to govern fire prevention activities generally and also activities pertaining to uses and occupancy of existing buildings, vehicles, equipment, materials, substances and devices conducted independently of the administration and enforcement of the Construction Code.

IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Millcreek, Erie County, Pennsylvania as follows:

1.01. Adoption of International Code. The International Fire Code, 2009 edition, is hereby adopted as the Fire Code of Millcreek Township, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life and property in the occupancy of buildings and premises as herein provided as if fully set forth in this Ordinance, with the additions, deletions and changes prescribed in Sections 1.02, 1.03 and 1.04 of this Ordinance, below.

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1.02. Chapter 1 of the International Fire Code, 2009 edition (Scope and Administration) is substantially amended and restated, as set forth in Appendix 1 to this Ordinance which is hereby incorporated in and made a part of this Ordinance, said restatement involving and including the following revisions to the International Fire Code:

1.02.1 In Section 101.1, Millcreek Township, Erie County, Pennsylvania shall be inserted as the name of jurisdiction.

1.02.2 Generally, the Board of Supervisors shall be set forth as the governing body and/or the appointing authority.

1.02.3 Section 101.2.1 is amended to specify that no appendices or portions of appendices to the International Fire Code, 2009 edition, are adopted.

1.02.4 Section 102.1 is substantially amended, to provide as follows:

102.1 Construction and design provisions. The construction and design provisions of this code shall not pertain to new construction, additions, renovations, alterations, installation of building systems and change in use and occupancy occurring on and after July 8, 2004, these matters governed and enforced under the Millcreek Township Construction Code. The construction and design provisions of this code shall apply to:

1. Structures and buildings that were legally occupied and existing on July 1, 2004.
2. Facilities and conditions not regulated by the Construction Code which arise after the adoption of this code.
3. Existing structures, facilities and conditions not legally in existence at the time of adoption of this code.
4. Existing structures, facilities and conditions which, in the opinion of the fire code official and with regard for the foregoing provisions constitute a distinct hazard to life or property.

1.02.5 Section 102.4 is substantially amended, to provide as follows:

102.4 Application of construction code. The design and construction of new structures shall comply with the Pennsylvania Construction Code as adopted by Millcreek Township (the "Millcreek Construction Code"), and any alterations, additions, changes in use or changes in structures required by this code, which are within the scope of the Millcreek Township Construction Code, shall be made in accordance therewith. Said Construction Code shall be administered and enforced by the building code official appointed by the Township. The fire code official shall not exercise authority which has been vested in the Construction Code building code official, notwithstanding any contrary provisions of this code.

1.02.6 Section 102.5(2) is amended, by adding a final clause providing: , subject to the provisions of Section 102.4, above.

- 1.02.7 Section 102.7 is amended by adding a final sentence providing: These references shall not be interpreted so as to expand the scope of this code.
- 1.02.8 Section 102.10 is amended by adding the following as its final sentence: Where a provision of this Code conflicts with a provision of a Township ordinance or regulation, that other ordinance or regulation shall control.
- 1.02.9 Section 103.1 is amended by adding the following final clause: and the conduct of fire prevention programs sponsored and/or sanctioned by the Township.

- 1.02.10 Section 103.2 is amended to provide:

103.2 Appointment. The fire code official shall be appointed by the Board of Supervisors or be that retained entity or person in charge of a retained entity as approved by the Board of Supervisors.

- 1.02.11 Section 103.3 is amended and restated to provide as follows:

103.3 Deputies. In accordance with the prescribed procedures of the Township, the Board of Supervisors shall employ one or more deputies if this Code is enforced by a department of the Township or, if the Township retains an entity to enforce this Code, said entity shall appoint such deputy(ies) as are deemed appropriate. Deputies shall have such powers as are delegated by a retained code official or, if none, as directed by the Board of Supervisors.

- 1.02.12 Section 103.4 is amended and restated to provide as follows:

103.4 Liability. The fire code official, members of the board of appeals and other persons employed or retained to enforce this Code, while acting for Millcreek Township in good faith and without malice or recklessness in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties.

- 1.02.13 Section 104.2 (Applications and permits) is amended to provide as follows:

The fire code official is authorized to receive applications, review documents and issue permits for matters regulated by this code, issue permits for operations regulated by this code, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code. This provision is not intended to extend to matters enforced and administered by a building code official under the Construction Code Ordinance.

- 1.02.14 Section 104.3 (Right of Entry) is amended to provide as follows:

104.3 Right of entry. Whenever it is necessary to make an inspection to enforce the provisions of this code under an inspection program established by the Board of Supervisors or whenever the fire code official has reasonable cause to believe that there exists in a building or upon any premises any conditions or violations of this code which make the building or premises unsafe, dangerous or

hazardous, the fire code official shall have the authority to enter the building or premises at all reasonable times to inspect or to perform the duties imposed upon the fire code official by this code; provided, that: (i) if such building or premises is occupied, the fire code official shall present credentials to the occupant and request entry; (ii) if such building or premises is unoccupied, the fire code official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry; and (iii) if entry is refused, the fire code official has recourse to every remedy provided by law to secure entry. Such recourse shall be pursued only with authorization by the Board of Supervisors and then only in cases posing a serious threat to fire safety.

1.02.15 Section 104.3.1 (Warrant) is deleted.

1.02.16 Section 104.6 is amended by adding the following as its final sentence: All such records shall be deemed records of the Township, and shall be retained in such manner as is directed from time to time by the Board of Supervisors.

1.02.17 Section 105.1 is amended and restated to provide as follows:

105.1 General. Permits shall be in accordance with Sections 105.1.1 through 105.7.14; provided, that to the extent such matters are regulated by the Millcreek Township Construction Code, such matters shall be administered and enforced by the building code official retained by the Township as to said other Code.

1.02.18 Section 105.3.2 is amended and restated to provide as follows:

105.3.2 Extensions. A permittee holding an unexpired permit shall apply for an extension of the time within which the permittee will commence work under that permit when work could not be commenced within the time required by this Section for good and satisfactory reasons. The fire code official is authorized to grant, in writing, one or more extensions of the time period of a permit for periods not to exceed 180 days each, where justifiable cause for such extension has been demonstrated.

1.02.19 Section 105.4 is amended and restated to provide as follows:

Construction documents shall be in accordance with this section; provided, that documents subject to regulation under the Construction Code are excluded from the administrative provisions of this Chapter.

1.02.20 Section 105.5 is amended as to its initial sentence, so as to provide that:

105.5 Revocation. The fire code official is authorized to revoke a permit issued under the provisions of this code when it is determined that there has been a false statement or misrepresentation as to the material facts in the application or construction documents on which the permit or approval was based including, but not limited to, any one of the following:

1.02.21 Section 105.6.30 is amended so as to provide as follows:

105.6.30 Open burning. Where not prohibited by the Township’s Open Burning Ordinance, No. 2011-7 as amended, an operational permit is required for the kindling or maintaining of an open fire or a fire on any public street, alley, road, or other public or private ground. Instructions and stipulations of the permit shall be adhered to. **Exception:** Recreational fires.

1.02.22 Section 106.1 is amended so as to provide as follows:

106.1 Inspection authority. The fire code official is authorized to enter and examine any building, structure, marine vessel, vehicle or premises in accordance with and subject to Section 104.3 for the purpose of enforcing this code.

1.02.23 Section 108 (Board of Appeals) is amended and restated in its entirety, so as to provide as follows:

**SECTION 108
BOARD OF APPEALS**

108.1 Board of appeals established. In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals, which shall be the same board of appeals established to hear appeals under the Township’s Property Maintenance Code.

108.2 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this Code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code do not fully apply, or the requirements of this Code are adequately satisfied by other means.

108.3 Membership of board. The board of appeals shall consist of a minimum of three members who are qualified by experience and training to pass on matters pertaining to property maintenance, hazards of fire, explosions, hazardous conditions or fire protection systems and who are not employees of the Township. The Board of Supervisors shall have sole authority to appoint persons to membership on the board. The Board of Supervisors shall have authority, in its discretion, to appoint two or more panels of said board, each of which shall have a minimum of three members, if deemed necessary or appropriate to accommodate the volume, complexity or timing of appeals.

108.3.1 Alternate members. The Board of Supervisors shall appoint a minimum of two alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.

108.3.2 Chair. The board shall annually select one of its members to serve as chair.

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108.3.3 Disqualification of member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.

108.3.4 Secretary. Members of the board of appeals shall designate a qualified person to serve as secretary of the board. The secretary shall file a detailed record of all proceedings in the office of the Code Administrator.

108.3.5 Compensation of members. Compensation of members shall be as determined by resolution of the Board of Supervisors.

108.4 Notice of meeting. The board or a designated panel of the board shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.

108.5 Open hearing. All hearings before the board shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of a minimum of two-thirds of the board's or panel's membership.

108.5.1 Procedure. The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

108.6 Postponed hearing. When a quorum of the Board or, if applicable, the designated panel of the board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

108.7 Limitations on authority. An application for appeal shall be based on a claim that the intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent method of protection or safety is proposed. The board shall have no authority to waive requirements of this code.

108.8 Board decision. The board or a designated panel of the board shall modify or reverse the decision of the code official only by a concurring vote of a majority of the total number of appointed board members.

108.8.1 Records and copies. The decision of the board shall be in writing. Copies shall be furnished to the appellant and to the code official.

108.8.2 Administration. The code official shall take immediate action in accordance with the decision of the board.

108.9 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board.

1.02.24 Section 109 is amended so as to:

- (i) establish a subsection numbered 109.2.1 (Form of notice);

- (ii) renumber the sections entitled Service as 109.2.2, Compliance with orders and notices as 109.2.3, Unauthorized tampering as 109.3, Prosecution of violations as 109.4, Violation penalties as 109.5 and Abatement of violations as 109.7; and (iii) create new Subsections 109.5.1 and 109.5.2 and new Section 109.6.

1.02.25 Section 109.2.1 is amended and restated to provide as follows:

109.2.1 Form of notice. Such notice prescribed in Section 109.2 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the building, premises, vehicle, storage facility or outdoor area sufficient for identification.
3. Include a statement of the violation(s) and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the premises, vehicle, storage facility or outdoor area into compliance with the provisions of this Code.
5. Inform the property owner or other responsible party of the right to appeal.
6. Inform the property owner that, in the event the cited violation(s) is or are not rectified by the time of the scheduled reinspection, the Township retains rights to bring an action to obtain a judgment for fines for violation.

1.02.26 Section 109.2.2 (Service), as renumbered, is amended so as to add as its final sentence: If a notice sent by certified mail is returned "undeliverable" or an equivalent, a copy of the notice or order shall be sent to the responsible party by U.S. first class mail at the last known address.

1.02.27 Section 109.3 (Unauthorized tampering), as renumbered, is amended so as to add as its final sentence: Any such unauthorized tampering shall be a violation of this Code.

1.02.28 Section 109.4 (Prosecution of violations) is amended so as to provide as follows:

109.4 Prosecution of violations. Any person failing to comply with a notice of violation or order served in accordance with this Section shall be deemed guilty of a summary criminal offense as determined by Section 1601(c.1)(2) of the Second Class Township Code. If the notice is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the premises, vehicle, storage facility or outdoor area in violation of the provisions of this Code or of the order or direction made pursuant to this Code. All costs of any action taken by the Township on such premises and after notice shall be charged against the real estate upon which the premises, structure, vehicle, storage facility or outdoor area is located and shall be a lien upon such real estate.

1.02.29 Section 109.5 (Violation penalties) and its subsections are hereby amended and restated so as to provide as follows:

109.5 Violation penalties. A fine in an amount not less than \$250.00 and not more than \$1,000.00 shall be imposed upon any person or entity found by a Magisterial District Judge to have violated any provision of this Code. The fine for a third or greater violation shall be in an amount not less than \$500.00 and not more than \$1,000.00.

109.5.1 Penalty - Unauthorized Tampering. Where a person found to have violated this Code also violated Section 109.3 (Unauthorized Tampering), such tampering shall constitute a separate offense, the prescribed fine therefor being not less than \$250.00 and not more than \$1,000.00.

109.5.2 Penalty - Violation of Stop Work Order. Any person found to have violated a "stop work" order issued under Section 111 shall pay a fine for that violation, distinct from all other violations, which shall be in an amount not less than \$500.00 and not more than \$1,000.00.

1.02.30 Section 109.6 (Definition of violations) is added, providing as follows:

109.6 Definition of violations. Each violation of this Code shall constitute a separate violation and be subject to a separate penalty. Each day a violation occurs and/or continues shall constitute a separate violation.

1.02.31 Section 109.7 (Abatement of violations) as renumbered, is amended so as to provide as follows:

109.7 Abatement of violations. The imposition of fines for violation shall not preclude the Township from instituting appropriate actions to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure, premises, vehicle, storage facility or outdoor area, or to stop an illegal act, conduct, business or utilization of a building, structure, premises, vehicle, storage facility or outdoor area.

1.02.32 Section 110.2 (Evacuation) is amended so as to provide as follows:

110.2 Evacuation. The department official in charge of an incident or the fire code official shall be authorized to order the immediate evacuation of any occupied building deemed unsafe when such building has hazardous conditions that present imminent danger to building occupants. Persons so notified shall immediately leave the structure or premises and shall not enter or re-enter until authorized to do so by the person who issued the evacuation order.

1.02.33 Section 111.4 (Failure to comply) is amended so as to add as its final clause: shall be liable to a fine as prescribed in Section 109.5.2, above.

1.02.34 Section 113 is amended, by deleting its Subsections 113.4 and 113.5 and amending Sections 113.1, 113.2 and 113.3 so as to provide as follows:

113.1 Fees. A permit shall not be issued until the fees established therefor have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

113.2 Schedule of permit fees. The Board of Supervisors shall have authority to establish fees for services provided, permits issued and/or inspections and other services performed under this Code. Such established fees shall be paid to the person or entity determined by the adopted fee schedule.

113.3 Work commencing before permit issuance. Any person who commences any work, activity or operation regulated by this code before obtaining the necessary permits shall be subject to an additional fee established by Board of Supervisors, which shall be in addition to the required permit fees.

1.03. Section 806.1.1 of the International Fire Code, 2009 edition (relating to natural cut trees), is not adopted, so as to be consistent with the Pennsylvania Construction Code.

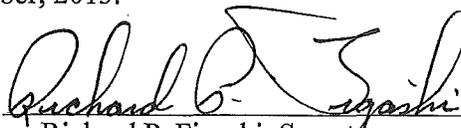
1.04. The geographic limits referred to in Sections 3506.2 (geographic limits in which the storage of flammable cryogenic fluids in stationary containers is prohibited) and 3804.2 (geographic limits in which the storage of liquefied petroleum gas is restricted for the protection of heavily populated or congested areas) of the Code shall be as established by State law or regulation or by ordinance of the Township, as the case may be.

1.05. Subsequent editions and/or revisions of the IPMC shall be substituted for the 2009 edition as they are published, subject to the amendments set forth in this Ordinance. The Board of Supervisors, by ordinance, may make such other and further amendments to future editions of the Code as it deems appropriate.

1.06. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is hereby declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

1.07. All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed, these including but not limited to Ordinance No. 92-6.

BE IT ENACTED this 17th day of December, 2013.


Richard P. Figaski, Secretary

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