

Upon motion by Brian P. McGrath, seconded by Joseph S. Kujawa, the following Ordinance was duly enacted, 3 voting in favor of enactment, 0 voting against enactment.

**ORDINANCE NO. 2013-1**

**An Ordinance of the Township of Millcreek, Erie County, Pennsylvania establishing regulations governing proposed developments and uses to ensure proper closure and removal of underground storage tanks systems upon termination of business operations; providing penalties for violation and containing repealor and severability clauses.**

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**WHEREAS**, numerous properties in Millcreek Township remain distressed and unused because owners or occupants thereof ceased service station, fuel sales and related business operations without ensuring removal of underground storage tanks (“USTs”) and related accessories in accordance with applicable regulations of the Commonwealth; and

**WHEREAS**, the Board of Supervisors recognizes that while it is within the authority of the Commonwealth to establish and enforce regulations governing the installation, operation and manner of permanent closure and/or removal of USTs, the Commonwealth lacks funds to ensure proper removal of USTs when their owners fail to act appropriately; and

**WHEREAS**, the Board of Supervisors finds that it is necessary to require certain measures as precautions to assure availability for funding of the actual closure and removal of USTs installed in future developments and uses in the Township if a responsible party fails to do so.

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

1.01 Disclosure of Intent to Install UST(s). Any person applying to the Township after the effective date of this Ordinance for approval of a development plan and/or zoning permit who intends to install and/or maintain one or more USTs on the premises shall be obligated to disclose such intention and identify the number and location of proposed USTs on any application.

1.02 Requirement Imposed on Plan or Permit Approval. Any approval of a development plan or zoning permit application where one or more USTs are proposed to be installed and/or maintained shall be subject to the following requirements:

- (1) The Applicant shall ensure that its UST System is installed, maintained, repaired and/or reconstructed in accordance with all applicable laws and regulations during business operations for sale of gasoline and/or other vehicle fuel(s).

- (2) Within sixty (60) days after the Applicant or any successor of Applicant terminates or closes business operations for the sale of gasoline or other vehicle fuel(s), the Applicant shall remove all of its underground storage tanks, fuel dispensing pumps, pump islands, product piping runs and other appurtenances ("UST System") in accordance with all Federal, State and local environmental laws and regulations applicable to the UST System on the Property and shall also backfill and place full-depth pavement restoration to match level grade of any areas disturbed by such removal. These obligations are subject to regulations governing permanent closure of a UST System as described in 25 Pa. Code Section 245.452, as may in the future be amended.
- (3) Prior to release of an approved development plan for recording or, where no subdivision or land development is involved, prior to issuance of a zoning permit for the proposed use, the Applicant shall tender to Millcreek Township financial security in an amount equal to 110% of the cost of all of the foregoing closure and removal measures to be taken in the event of termination of business operations estimated by a Pennsylvania professional engineer under his or her seal as of a date three (3) years after the date of such certification and agreed to by the Township's Engineer.
- (4) Such financial security shall be in a form deemed acceptable under Section 6.19 of the Subdivision and Land Development Ordinance as may in the future be amended, any escrow account to be in a form and subject to written agreement acceptable to the Township's Solicitor. Any escrow account shall be restricted against withdrawals except with the prior consent or on the instance of the Township.
- (5) The amount of such financial security shall be adjusted every three years after the initial valuation date to account for adjustments in the CPI-U and which is agreed to by the Township's Solicitor.
- (6) In the event of a breach or default by an Applicant, Millcreek Township shall be entitled to exercise its rights against said financial security to fund performance of closure and removal measures required under applicable laws and regulations. In such event, the procedures set forth in Section 6.19 of the Subdivision and Land Development Ordinance as to exercise of rights by the Township shall control.
- (7) These requirements shall be confirmed in writing in a written addendum to a Developer's Agreement or, if applicable, in a written agreement where no subdivision or land development is involved, and shall survive completion of development and construction activity and continue in effect so long as such UST System remains on the Property.

1.03 Post-Approval Installation. In the event any person applying for a development plan or zoning permit approval subsequent to the effective date of this Ordinance determines, after issuance of a plan approval or zoning permit, to install and maintain a UST System on the subject property, such person shall have an affirmative duty to apply to the Township's Zoning Department for a permit authorizing such installation as an amendment to the prior approval.

Such application shall be made not later than the date on which said person applies to the Pennsylvania Department of Environmental Protection ("PaDEP") for a license or permit authorizing such UST System. At such time, those requirements and provisions of Section 1.02, above, shall apply and said Applicant shall be obligated to tender financial security as therein provided.

1.04 Violation of Ordinance; Penalties for Violation.

- (1) It shall be unlawful and a violation of this Ordinance for any person to fail or refuse to disclose upon application for a development plan or zoning permit approval an intention to maintain and/or install USTs on the subject property.
- (2) It shall be unlawful and a violation of this Ordinance for any person to install a UST or a UST System on a property in Millcreek Township after application subsequent to the effective date of this Ordinance for approval of a development plan or zoning permit to apply to Millcreek Township for the permit required by Section 1.03, above, by the date therein set forth.
- (3) Each day a violation of this Ordinance continues shall constitute a separate offense and a continuing violation.
- (4) A civil fine of Five Hundred Dollars (\$500.00) is hereby imposed and prescribed for any violation of this Section. The prescribed fines shall be assessed for each day a continuing violation occurs or is permitted to occur.
- (5) In the event a violation of this Ordinance is believed to have occurred, the Township shall issue a written enforcement notice, directing that the violator take such action as the Township determines to be necessary to remedy such violation. If such violation is not remedied within the time allowed by such notice, the Township shall commence a civil enforcement action in the office of the District Magisterial Judge having jurisdiction.
- (6) The Township shall not issue any permit, plan or other approval to an applicant who, at the time of such application is in default or violation of this Ordinance.
- (7) All judgments entered in civil actions for enforcement commenced by Millcreek Township shall, in accordance with the Second Class Township Code and Ordinances 2007-6 and 96-9 as the same may in the future be amended, include the civil action fine prescribed for the violation in Section 1.04(4), plus all court costs and plus all attorney's fees incurred by Millcreek Township in such matter. A person found to have violated this Ordinance shall be responsible for payment of all attorneys' fees incurred by the Township in all proceedings related to enforcement, including appeals taken by the violator.
- (8) The Zoning Administrator and the Township Engineer are authorized to enforce and administer this Ordinance.

609517

1.05 Substantive Regulation Not Intended. This Ordinance is not intended to intrude into the substantive regulation by PaDEP of installation, maintenance, closure and removal of underground storage tanks and systems. This Ordinance is intended only to require that responsible parties ensure funding for closure and removal as required by applicable laws and regulations is accomplished upon termination of fuel sales and other activities for which the USTs were installed if the responsible party otherwise fails to do so.

1.06 Severability. 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 Repealor. All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed.

**BE IT ENACTED** this 5th day of February, 2013.

  
Richard P. Figaski, Secretary