

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

ORDINANCE NO. 2010-10

An Ordinance amending and restating Ordinance No. 2002-15, known as the Sidewalk Ordinance, amending, restating and consolidating regulations governing the construction, reconstruction, repair and maintenance of sidewalks; requiring issuance of a permit prior to construction or reconstruction of sidewalks; establishing fees and prerequisites for issuance of sidewalk construction permits; providing for inspection of all sidewalk construction work; adopting administrative procedures; providing for penalties for violation and containing repealor and severability clauses.

Findings

A. The Second Class Township Code, generally and as provided in Sections 1506, 1527, 2301-2332 and 2401, authorizes the Board of Supervisors to regulate streets and sidewalks.

B. The Millcreek Township Recreation and Open Space Plan, as adopted by Resolution 2002-R-17 on April 23, 2002, encourages development of sidewalks to encourage passive recreation and safe pedestrian circulation.

C. Millcreek Township, in its Subdivision and Land Development Ordinance, Zoning Ordinance, Public and Private Improvements Code and otherwise, has established regulations governing Township streets and sidewalks.

D. Despite existence of these regulations and specifications, the Board of Supervisors has determined that sidewalks, often constructed or reconstructed by property owners, have in many instances been constructed or reconstructed without regard to established regulations and have not been maintained in proper fashion.

E. The Board of Supervisors has determined that it is most appropriate, in terms of proper regulation of land use and development, that regulations governing required improvements such as streets and sidewalks be regulated by the Board of Supervisors and not through the Zoning Ordinance.

F. The Board of Supervisors, for reasons set forth, has determined that it is necessary and in the best interest of the public safety and welfare that regulations governing the construction, reconstruction, repair and/or maintenance of sidewalks and a process for their administration, inspection and enforcement be consolidated and restated so as to be generally applicable.

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

**ARTICLE 1
TITLE, PURPOSES AND APPLICATION**

1.01 Common Title This Ordinance shall be known as the Millcreek Township Sidewalk Ordinance.

1.02 General Purposes The general purposes of this Ordinance are to:

1.02.1 Further the general intention of the Township that pedestrian circulation be directed off from streets and highways, to encourage passive recreation and to serve the public health and safety.

1.02.2 Establish and reference regulations requiring the construction, maintenance and repair of sidewalks to provide a clear statement of applicable regulations.

1.02.3 Ensure that property owners construct and maintain sidewalks when they are required to do so.

1.02.4 Establish a process for implementation and administration of applicable regulations.

1.03 Application

1.03.1 This Ordinance is not intended to amend, modify or supersede the provisions of the Township's Subdivision and Land Development and Zoning Ordinances insofar as said ordinances require or pertain to sidewalks, and is not intended to amend, modify or supersede provisions of the Township's Public and Private Improvements Code insofar as it pertains to standards governing design, construction and inspection of sidewalks.

1.03.2 This Ordinance is intended to define those situations, not addressed in other ordinances, in which construction of sidewalks are required and to address other matters not specifically determined in the other ordinances.

1.03.3 Where construction of sidewalks is required solely by the Zoning Ordinance and the property is not involved in a subdivision or land development, any request for grant of variance relief shall be submitted to the Zoning Hearing Board. In all other situations, the Board of Supervisors shall hear and determine any and all requests for modification or deferral of sidewalk regulations and/or for variance relief from said regulations.

**ARTICLE 2
DEFINITIONS**

2.01 Definitions

2.01.1 General words and phrases used in this Ordinance shall be given their common and

ordinary meaning.

- 2.01.2 Where a word or term is not defined in this Ordinance, it shall be defined in accordance with definitions established in the Second Class Township Code, the Municipalities Planning Code, the Subdivision and Land Development Ordinance, the Zoning Ordinance, the Public and Private Improvements Code or in other applicable law or ordinance, as now existing or as may be amended in the future.
- 2.01.3 The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except in those instances where the context clearly indicates a contrary intention:

Applicant means any person who makes application for a permit.

Cost means actual expenditures incurred by the Township for labor, equipment, materials and contractors or subcontractors, and shall include all overhead and fringe benefits.

Emergency means any condition constituting a clear and present danger to life or to property by reason of escaping gas, exposed wires or other breaks or defects in the user's line.

Inspection fee means a fee paid by the permittee to the Township to defray sidewalk placement, construction or reconstruction inspection costs.

Permit fee means a fee paid by the permittee to Millcreek Township to cover the cost of issuing, processing and filing a sidewalk construction or reconstruction permit, as established by this Ordinance or by resolution of the Board of Supervisors.

Permittee means any person who has been issued a permit and has thereby agreed to fulfill all of the provisions of this Ordinance.

Person means any natural person, partnership, firm, association, corporation or utility.

Public and Private Improvements Code means the Millcreek Township Public and Private Improvements Code, enacted by Ordinance No. 2003-3, as amended.

Public utility means any utility company franchised by the Public Utility Commission of the Commonwealth of Pennsylvania and shall include any corporate authorities of Millcreek Township.

Sidewalk shall be and defined as set forth in the Public and Private Improvements Code.

Sidewalk area means that portion of the street right-of-way or other land reserved for sidewalks.

Subdivision and Land Development Ordinance means the Millcreek Township Subdivision and Land Development Ordinance, Ordinance No. 2006-9, as amended.

Work day means normal business day for the Township government, on Mondays through Fridays, excepting designated holidays.

Zoning Ordinance means the Millcreek Township Zoning Ordinance, Ordinance Nos. 2, 100 and 74-29, as amended and restated in the future.

ARTICLE 3 GENERAL REGULATIONS

3.01 Sidewalks as a Required Improvement

- 3.01.1 Generally, sidewalks shall be constructed along the right of way line of streets as an improvement required in connection with a minor or major subdivision, a land development, establishment or redevelopment of a multi-family residential, commercial, industrial and/or institutional use and, where they currently or in the foreseeable future will connect with other sidewalks, single- and two-family residential developments involving construction of new buildings and/or substantial alteration or addition to existing buildings.
- 3.01.2 The Subdivision and Land Development Ordinance, the Zoning Ordinance, the Public and Private Improvements Code, the Nuisance Ordinance and all other ordinances, resolutions and specifications referenced herein, as now in effect and as may in the future be amended, are incorporated by reference.
- 3.01.3 As provided in the Subdivision and Land Development Ordinance, sidewalks and pedestrian ways are improvements required in subdivisions and land developments and their construction in such developments shall be the obligation of the developer subject to that ordinance, with financial security ensuring such construction being tendered and costs of inspection and administration thereof being paid by the developer as provided in that ordinance and in resolutions adopted to implement it.
- 3.01.4 Sidewalks required as a “site improvement” or otherwise under the Zoning Ordinance shall constitute a required improvement in any application for zoning permit, construction permit and/or subdivision and/or land development approval.
- 3.01.5 Where a residence or building is proposed to be constructed, substantially altered and/ or substantially added to on a single lot and where not specifically required under other ordinances, sidewalks shall be constructed where such lot abuts or is proximate to one or more lots on which sidewalks have been constructed.
- 3.01.6 If lots of record are assigned separate Erie County tax parcel designations under a subdivision waiver or other procedure and construction on one or more of the lots affected by that process is then proposed, the standards of Section 301.5 shall govern; provided, that if any of said lots abuts or is proximate to one or more lots on which sidewalks have been constructed, sidewalk shall be constructed along all of said lots.
- 3.01.7 “Proximate.” The Board of Supervisors shall have sole authority to determine whether a lot is proximate to another such as to require or excuse construction of

sidewalks. In making such determination, if sidewalk has been constructed along any lot in the same block as any of the lots subject to a determination, such other sidewalk shall be deemed to be "proximate" to the lot(s) in question.

3.01.8 Exception. The general rules set forth above shall not apply, and sidewalks shall not be required where a single- or two-family dwelling is to be constructed, reconstructed or altered on a lot in a recorded subdivision which was approved prior to August 1, 2002 and was developed without sidewalks being constructed by the developer or, through delegation, by lot owners as a required improvement under regulations then in effect. This exception does not apply to subdivisions which served only to create additional lots and as to which the developer did not construct improvements, such construction being deferred until development of the lots.

3.02 **Property Owner to Construct Sidewalks When Required**

3.02.1 Where sidewalks are required in connection with development, subdivision or otherwise under Township ordinances, it shall be the duty of all owners of lots or parcels of land abutting a public street or State highway in the Township of Millcreek, at their own expense, to construct and maintain in place convenient sidewalks in front of and adjoining their respective lots or parcels of land for the use of pedestrians.

3.02.2 It shall be the concurrent duty of the contractor in charge of construction of any residence or improvement upon any lot or parcel of land abutting a public street or highway in the Township to construct sidewalks as herein provided.

3.02.3 Notwithstanding provisions of Section 3.02.1, where lots or parcels of land are established under a plan of subdivision or land development submitted to the Township for its approval, it shall be the obligation of the subdivider or developer to provide for the construction of sidewalks in front of and adjoining each respective lot within the subdivision or land development.

(1) To the extent authorized in the Subdivision and Land Development Ordinance and conditions imposed on plan approval, a subdivider or developer may be authorized to delegate to purchasers of lots within the subdivision or land development the duty of constructing sidewalks.

(2) No such delegation shall be authorized absent the express approval of the Board of Supervisors, which approval shall be conditioned upon the subdivider's or developer's entry into an appropriate written agreement assuring proper construction of sidewalks, financial security by the subdivider or developer for proper construction of all sidewalks and guarantee by the subdivider/developer of proper sidewalk construction.

(3) Delegation of the responsibility for construction of sidewalks in subdivisions and land developments shall not relieve the subdivider or developer of the obligation to ensure their proper and timely construction.

ARTICLE 4

APPLICATIONS, PERMITS, CONSTRUCTION AND INSPECTIONS

4.01 Permit Required for Construction or Reconstruction of Sidewalk

4.01.1 No person, firm or other entity shall construct or reconstruct any sidewalk within the right-of-way of a public street or highway in Millcreek Township without first obtaining a permit authorizing such construction.

- (1) Where such sidewalk is to be located within the right of way of a local street, such permit shall be issued by Millcreek Township.
- (2) Where such sidewalk is to be located within the right of way of a State highway, such permit shall be issued by PennDOT.

4.01.2 A separate permit shall be required for the laying out of a sidewalk along and adjacent to each lot within a subdivision or land development unless the subdivider or developer will construct such sidewalks, in which event one permit shall be issued for the entire continuous length of sidewalk to be constructed by such applicant; provided, that if a subdivider or developer seeks such permit, the Township shall not authorize delegation of the sidewalk construction.

4.02 Permit and Inspection Fees

4.02.1 All persons, firms or entities required to construct a sidewalk under Section 1.01 of the Ordinance (or under an approved subdivision or development plan) within a street as to which Millcreek Township has jurisdiction shall pay a permit fee as established by Resolution adopted by the Board of Supervisors from time to time.

4.02.2 All persons, firms or entities desiring to reconstruct all or a portion of any sidewalk within a street as to which Millcreek Township has jurisdiction shall pay a permit fee as established by Resolution adopted by the Board of Supervisors.

4.02.3 A separate fee shall be payable for each permit required under Section 3.01.

4.02.4 An applicant for a sidewalk permit shall also upon application a deposit in such sum as is required by Resolution adopted by the Board of Supervisors cover the permit fee and inspection fees as established, and as security for proper construction or reconstruction. Any excess remaining in the deposit after final inspection and certification of proper completion shall be refunded to the applicant.

4.02.5 The Board of Supervisors is authorized by Resolution adopted from time to time to modify the amounts of permit and inspection fees and deposits.

4.03 Specifications for Construction, Installation and Inspections

4.03.1 Location and Construction Standards. All sidewalks shall be located and constructed as required under the Subdivision and Land Development Ordinance and the Public and Private Improvements Code, as the same may in the future be amended or restated.

- (1) Where, because of topography, grade or other physical conditions, the Board

of Supervisors is satisfied that the public health and safety will be served thereby, a required sidewalk can be located, wholly or in part, outside of the street or highway right-of-way, so long as the owner on the development plat or otherwise in a document to be recorded, grants to the public a permanent easement for pedestrian access to and across such sidewalk area.

4.03.2 Applicant Must Obtain Construction Standards. All applicants for a sidewalk construction or reconstruction permit shall be obligated to obtain from the Township Engineer or PennDOT, as the case may be, existing specifications, and to follow such specifications in all respects.

4.03.3 Inspections and Prior Notice. An applicant granted a sidewalk construction or reconstruction permit shall be obligated to notify promptly the Township's designated inspector prior to actual laying of sidewalks, so that inspection thereof can be made. Any applicant failing to notify the inspector in order to request an inspection prior to laying of a sidewalk shall assume all risks of improper construction.

4.03.4 Restoration of Disturbed Areas. An applicant shall be responsible for restoring all areas excavated during the sidewalk construction or reconstruction, as required by Township specifications.

4.03.5 Final Inspection Required. When an applicant believes sidewalk construction or reconstruction and all restoration work has been completed, the applicant shall notify the Township's inspector and request a final inspection.

4.04 **Compliance With Regulations for Handicapped Person Access**

4.04.1 All sidewalks at intersections of public streets or highways in the Township which are being constructed, reconstructed or altered for any reason shall provide access for physically handicapped persons in accordance with specifications therefor on file with the Township Engineer or as established by applicable Federal, State or local regulation.

4.04.2 All sidewalks shall be constructed, reconstructed and/or maintained in accordance with applicable Federal, State or local regulations with regard to access for physically handicapped persons.

4.05 **Safety Precautions; Lights and Barricades**

4.05.1 When any portion of a public street's right-of-way is used under any permit, applicant shall assure conspicuous placement in the excavation or work area of a sufficient number of red lanterns or lights from dark until sunrise every night, to render the work area perfectly safe.

4.05.2 An applicant shall be responsible for the proper and safe performance of the construction or reconstruction, and for protecting against injury to person or damage to property which might result from the work.

4.05.3 Any excavations shall be protected by a guard rail or fence sufficient to protect against personal injury or property damage.

4.06 **Improper Construction; Laying With Improper Grade or Slope**

4.06.1 Any sidewalk which is laid or relaid in violation of or in nonconformity with Township or other applicable specifications governing the grade, materials, location, width or manner of construction is declared to constitute a violation of this Ordinance.

4.06.2 Any sidewalk which is laid or relaid in violation of or in nonconformity with Township specifications governing the grade, materials, location, width or manner of construction is declared to constitute a public nuisance, as the term is defined in and subject to the provisions of the Millcreek Township Nuisance Ordinance.

ARTICLE 5 CARE, CONDITION AND MAINTENANCE

5.01 Abutting Owners Responsible for Care, Condition and Maintenance

5.01.1 The owners of all properties which abut a street or State highway within whose right of way a sidewalk has been constructed shall be responsible for the proper care, maintenance and condition of said sidewalk. The owner's duty shall extend but not be limited to removal of snow, ice, debris or obstructions and to repair, reconstruction and replacement as necessary to ensure that said sidewalks are in reasonably good and safe condition for the use of pedestrians.

5.01.2 From and after the effective date of this Ordinance, owners of properties abutting a sidewalk within the right of way of a street or State highway shall be responsible for ensuring that the abutting sidewalk area is not blocked or obstructed.

5.01.3 Millcreek Township shall not be responsible for the construction, reconstruction, maintenance, condition or repair of any sidewalk within the right of way of a street or State highway absent a written agreement or order of a court or agency having appropriate jurisdiction which provides to the contrary.

5.01.4 Any placement of a facility of a public utility within a sidewalk area shall be subject to applicable Federal, State and local regulations, and Millcreek Township shall not have any responsibility as to the location or condition of said facility.

ARTICLE 6 ADMINISTRATION

6.01 Administration-Generally

6.01.1 Whenever a sidewalk is or is to be constructed, reconstructed or altered by the owner of the lot or parcel of land along which it is to extend independently of the obligations of a subdivider or land developer under an approved plan, the Code Administrator shall receive and issue permits and enforce the provisions of this Ordinance.

6.01.2 Whenever a sidewalk is or is to be constructed or reconstructed as a condition of approval of a subdivision or land development plan, the Code Administrator shall assist in administration if and to the extent permits are required due to delegation of

the responsibility for sidewalk construction, and the Township Engineer shall otherwise be authorized to receive permits, administer regulations and enforce obligations imposed under this Ordinance, the Subdivision and Land Development Ordinance or other governing ordinance, as may in the future be amended.

6.02 **Modifications and Variances**

6.02.1 Submission of Request.

- (1) Where a sidewalk is required as an improvement to a lot established in a subdivision or land development under the Subdivision and Land Development Ordinance, any request for modification or variance from regulations in that ordinance or in this ordinance must be submitted by the applicant contemporaneously with the plan application and shall be considered by the Board of Supervisors as it acts upon the plan application.
- (2) Where a sidewalk is required solely under the Zoning Ordinance or this Ordinance, any request for modification or variance from regulations must be submitted by the applicant contemporaneously with submission of an application for zoning permit, sidewalk permit or other requisite permit.
- (3) Unless an applicant can establish that a request results only from conditions that did not exist and could not reasonably have been foreseen at the time of the plan or permit application and does not result from self-inflicted hardship or acts or omissions of the developer or owner, no request for modification or variance submitted other than as required above shall be considered.

6.02.2 Modifications. Where deemed necessary and appropriate, the Board of Supervisors may grant a modification from the general regulations in circumstances in which sidewalk construction is necessary or appropriate but some modification of a general regulation will best protect the public health and safety in a reasonable manner. Modifications may involve a deferral or nonsubstantial alteration of the manner or location of constructing sidewalks. Deferral of the duty to construct sidewalks shall be allowed only where security to ensure future construction is provided.

- (1) Deferral of Construction. If applicable regulations would require construction of sidewalks but an applicant for relief establishes that proper cause for deferring actual construction exists, the Board may defer the time of construction of sidewalks so long as it ensures proper security for construction of sidewalks at such time as the period of deferred construction expires. The burden of establishing cause for a deferral is on the applicant and deferral should be allowed only where future circumstances likely would be materially different than those existing at the time of the Board's action.
- (2) Other modifications, in appropriate circumstances, may include design, location wholly or partially outside a right of way and other relief which does not extend to relieving compliance with the requirement of construction. Cost is not a ground for a modification.

6.02.3 Variances. A variance from the requirement that sidewalks be constructed shall be

granted only when it is determined that strict enforcement of the general regulation, as applied to the location and/or the physical conditions of the affected property would not serve the interests of the public safety and/or would create potential risks of harm.

- (1) Application for Variance. An applicant seeking variance relief must submit such request in writing at the time of submitting an application for plan approval or permit as to which such request pertains. Such request must state all reasons supporting applicant's request. In no event shall a variance be granted after approval of a plan or issuance of a permit requested by that party.
- (2) Fee. An applicant for variance shall tender the same fee due under resolution for appeals to the Board of Supervisors.
- (3) Cost Not a Ground for Relief. The cost of constructing and/or maintaining sidewalks shall not be considered a proper ground for requesting or granting variance relief.

6.02.4 Standards for Grant of Variance Relief.

- (1) The allowance of variance relief is not intended and shall not be applied to evade or limit the general requirement in this and other ordinances that sidewalks be constructed.
- (2) Variance relief from the obligation to construct and maintain sidewalks may be granted where an applicant establishes that any of the following circumstances exist and such circumstances are such that requiring construction of sidewalks would not serve the intended public purpose, would create significant risk of harm or injury and/or would result in sidewalk being constructed that would not, in the future, extend to other sidewalk and that such findings result from unique conditions and not from general application of the regulation:
 - (i) Where, because of grade, slope, topography or other physical conditions, construction of a sidewalk would not feasibly serve the intended purpose of facilitating safe pedestrian circulation off of a street or highway.
 - (ii) Where a subdivision creates three or fewer lots, none of which abuts or is likely in the future to abut another lot on which a sidewalk has been or likely would in the future be constructed; provided, that in such event, future subdivision of said lots shall be prohibited; such prohibition shall be stated on the plan of subdivision as recorded and such relief would be rescinded in the event of a future subdivision.
 - (iii) Where a subdivision includes streets and sidewalks constructed within its boundaries and abuts another, pre-existing street whose

grade, slope or topography is such that requiring construction of sidewalks along it would create a potentially unsafe condition and/or be unlikely to connect to current or prospective future sidewalks.

- (iv) Where the Board of Supervisors concludes that requiring construction of a sidewalk would not serve the public purposes of the requirement in view of future development patterns, absence of sidewalks in the vicinity and/or physical conditions as described in Section 6.02.3.2.3, above.

6.02.5 A condition or situation created by the applicant or otherwise within the applicant's control shall be considered a self-created hardship, which generally shall preclude the grant of variance relief.

6.02.6 The Board of Supervisors (or, as applicable, the Zoning Hearing Board) shall have authority to impose such conditions on the grant of variance relief as it believes are necessary and appropriate in the circumstances.

6.02.7 Where it is determined that proper cause for grant of variance relief exists, the variance relief granted shall be limited to such extent as is necessary to address the causes found to exist which justify relief.

6.02.8 The applicant and all grantees and successors of the applicant shall be responsible for complying with all conditions imposed on the grant of relief.

ARTICLE 7 PENALTIES FOR VIOLATION; ENFORCEMENT

7.01 **Violation.** Any violation of this Ordinance shall give rise to an action for enforcement, in accordance with this Article, the Second Class Township Code and applicable Township ordinances governing enforcement of ordinances.

7.02 **Penalties for Violation; Enforcement**

7.02.1 In the event a violation cited is not remedied after issuance of an administrative enforcement notice, a person found in a civil action instituted by the Township to have violated this Ordinance shall be subject to the civil fines as prescribed in this Section for each violation and for each day such violation(s) continue, plus all costs and plus all attorney's fees incurred by the Township, in accordance with Ordinance 96-9 as amended.

7.02.2 Any person, firm or other entity who fails to apply for and obtain a permit required under Section 4.01, to comply with inspection requirements under Section 4.02 of or to properly maintain an existing sidewalk as required under Sections 4.04 and 5.01 of this Ordinance shall violate this Ordinance and, upon such determination by the District Magisterial Judge, shall be obligated to pay a civil fine of \$300.00.

7.02.3 Any person, firm or other entity who violates any other provision of this Ordinance shall, upon determination of violation by the District Magisterial Judge, pay a civil fine

of \$600.00 upon a finding of violation;

- 7.02.4 Each day a violation of this Section occurs shall be deemed a separate violation, and shall subject the violator to a fine or penalty for each day a violation continues.
- 7.02.5 Failure to construct and/or improper construction of sidewalks along lots within an approved subdivision or land development plan shall constitute a violation of and default under the subdivider's or developer's Developer's Agreement and financial security tendered to the Township as security for construction of all required improvements. In such event, the Township Engineer and the Board of Supervisors shall exercise all remedies granted to the Township under the Developer's Agreement and/or financial security, including but not limited to ensuring proper construction of sidewalks and restoration of disturbed areas with the subdivider or developer thereafter obligated to pay all costs thereof, directly upon receipt of the Township's invoice or through exercise by the Township of rights against the financial security, as provided in the Subdivision and Land Development Ordinance.
- 7.02.6 Any sidewalk laid or relaid independently of an approved subdivision or land development which is constructed in disregard of or in nonconformity with established specifications, as a public nuisance, shall be abated by the Township in accordance with authority granted in the Millcreek Township Nuisance Ordinance and the Second Class Township Code. In the event the property owner shall fail to abate the nuisance and remedy all cited violations within thirty (30) days after the date of the enforcement officer's notice of violation, the Board of Supervisors shall authorize removal of defective sidewalk and its proper replacement. In that event, all costs and expenses incurred by the Township in removing and replacing the defectively constructed sidewalk, together with all attorneys' fees, engineering and inspection fees and other costs incurred by reason of the default and enforcement or collection measures, shall be paid by the property owner and collected either under the Municipal Claims Act or by a civil action.
- 7.02.7 The Code Administrator and Township Engineer are authorized to enforce this Ordinance, and to exercise all remedies authorized under this Ordinance, the Subdivision and Land Development Ordinance (including remedial actions) and/or under other applicable Township ordinances, as may in the future be amended. The Treasurer is authorized to issue all assessments authorized under this Ordinance, and the Solicitor shall cause to be filed and enforced all liens and claims filed as to unpaid assessments and participate as necessary in civil enforcement actions.

ARTICLE 8 GENERAL PROVISIONS

- 8.01 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.

8.02 Repealor. All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed. This Ordinance is expressly intended to amend and restate Ordinance No. 2002-15 and to supersede said Ordinance No. 2002-15 upon the effective date of this Ordinance.

BE IT ENACTED this 5th day of October, 2010.

Richard P. Figaski, Secretary