RESOLUTION NO. ____ - 2019

A RESOLUTION OF THE BOARD OF SUPERVISORS OF MAIDENCREEK TOWNSHIP, BERKS COUNTY, PENNSYLVANIA EXPRESSING OPPOSITION TO PENNSYLVANIA HOUSE BILL 349 OF 2019 REQUIRING MUNICIPALITIES ENFORCING THE PENNSYLVANIA UNIFORM CONSTRUCTION CODE THROUGH UTILIZATION OF THIRD PARTY AGENCES TO RETAIN TWO THIRD PARTY AGENCIES TO ACT ON BEHALF OF THE MUNICIPALITY

WHEREAS, Maidencreek Township, Berks County, Pennsylvania elected to become an opt-in municipality and enforce the Pennsylvania Uniform Construction Code Act ("UCC") either via a municipal employee or retention of a third-party agency; and

WHEREAS, Maidencreek Township elected to enforce and continues to enforce the UCC through retention of a third-party agency; and

WHEREAS, Maidencreek Township has received no complaints regarding its utilization of a single third-party agency to enforce the UCC in its jurisdiction; and

WHEREAS, pursuant to the Second-Class Township Code of the Commonwealth of Pennsylvania, if Maidencreek Township is unsatisfied or receives complaints regarding the performance of the duties of a code enforcement official, the Board of Supervisors of Maidencreek Township may terminate and appoint a new code enforcement official; and

WHEREAS, the UCC as it currently exists allows Maidencreek Township to select more than one code enforcement official if it so desires; and

WHEREAS, House Bill 349 removes all meaningful authority from local governments as to administration and enforcement of the UCC; and

WHEREAS, House Bill 349 provides the requirements for a municipality to retain and contract with two (2) third party agencies to administer and enforce the UCC; and

WHEREAS, notwithstanding the provision in House Bill 349 that one of the two third party agencies shall be designated as the municipality enforcement agency, Maidencreek Township believes that utilization of two third party agencies in a municipality will create conflict regarding administration and enforcement as well as confusion regarding two different fee schedules; and

WHEREAS, House Bill 349 requires municipalities to request proposals for service every three years for third party agencies which is a requirement not imposed on ANY other service or product a municipality procures and which will increase costs and create a burden on the time and resources of municipal employees.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of Maidencreek Township, Berks County, Pennsylvania, that the Board of Supervisors opposes House Bill 349. House Bill 349 removes from local governments the ability to meaningfully administer and enforce the UCC in a manner that protects the health, safety and welfare of their residents.

FURTHER RESOLVED, by the Board of Supervisors of Maidencreek Township, Berks County, Pennsylvania that they respectfully request the members of the Commonwealth of Pennsylvania House of Representatives Labor and Industry Committee vote in opposition to House Bill 349.

FURTHER RESOLVED, that a copy of this Resolution shall be sent to members of the Commonwealth of Pennsylvania House of Representatives Labor and Industry Committee.

IN WITNESS WHEREOF, the Board of Supervisors of Maidencreek Township, Berks County, Pennsylvania has caused this Resolution to be adopted this ____ day of _____, 2019.

BOARD OF SUPERVISORS
MAIDENCREEK TOWNSHIP,
BERKS COUNTY, PENNSYLVANIA

_____
Claude Beaver, Chairman

_____
Heidi Fiedler, Vice Chair

_____
Joseph Rudderow III, Board Member

Attest: _____
Secretary

PRIOR PRINTER'S NOS. 326, 1087 PRINTER'S NO. 1129

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 349 Session of 2019

INTRODUCED BY HEFFLEY, GREINER, RYAN, MOUL, MILLARD, MACKENZIE, KNOWLES, EMRICK, HILL-EVANS, LAWRENCE, MALONEY, COX, TURZAI AND MASSER, FEBRUARY 1, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 27, 2019

AN ACT

Amending the act of November 10, 1999 (P.L.491, No.45), entitled "An act establishing a uniform construction code; imposing powers and duties on municipalities and the Department of Labor and Industry; providing for enforcement; imposing penalties; and making repeals," in adoption and enforcement by municipalities, further providing for administration and enforcement.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 501(b)(1), (2) and (3) and (c)(1) of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, ~~amended October 25, 2017 (P.L.356, No.36),~~ are amended, subsection (b) is amended by adding a paragraph and the section is amended by adding subsections to read: <--

Section 501. Administration and enforcement.

* * *

(b) Municipal administration and enforcement.--This act may be administered and enforced by municipalities in any of the

following ways:

(1) By the designation of an employee to serve as the municipal code official to act on behalf of the municipality for administration and enforcement of this act. A municipal code official may utilize third-party agencies to supplement the municipal code enforcement program's plan review and inspection services or may utilize third-party agencies to perform plan review and inspection services in categories which its program does not possess the necessary personnel to administer.

(2) By the retention of one or more construction code officials or third-party agencies to act on behalf of the municipality for administration and enforcement of this act. This paragraph shall expire January 1, 2020.

(2.1) On and after January 1, 2020, by the retention of two or more third-party agencies to act on behalf of the municipality for administration and enforcement of this act.

(3) Two or more municipalities may provide for the joint administration and enforcement of this act through an intermunicipal agreement under 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation). The following apply:

(i) ~~Intermunicipal~~ INTERGOVERNMENTAL COOPERATION <--
agreements that provide for the joint administration and enforcement of this act by utilizing third-party agencies shall be in writing and conform to paragraph (2.1) on and after January 1, 2020.

(ii) Professional service contracts entered into with third-party agencies on or after the effective date of this subparagraph for the purpose specified under

subparagraph (i) may not exceed three years.

(iii) The provisions of subsections (b.1), (b.2) and (b.3) shall apply to ~~intermunicipal~~ INTERGOVERNMENTAL COOPERATION agreements that provide for the joint administration and enforcement of this act by utilizing third-party agencies. <--

* * *

(b.1) Administration and enforcement by third-party agencies.--A municipality opting to administer and enforce this act by retaining two or more third-party agencies under subsection (b)(2.1) shall be subject to the following requirements:

(1) The services of the third-party agencies shall be furnished and performed under written professional services contracts with the municipality.

(2) In entering into professional services contracts ~~under~~ ON OR AFTER THE EFFECTIVE DATE OF this subsection, the governing body of the municipality shall take into consideration all of the following: <--

(i) The qualifications of the third-party agency.

(ii) The fee schedule.

(iii) The availability of services.

(iv) The input of affected stakeholders.

(3) Third-party agencies contracting with the municipality under this subsection may not be affiliated with one another.

~~(4) A professional services contract between a municipality and a third-party agency in effect on the effective date of this subsection may remain in effect for the purpose of satisfying the requirement that the~~ <--

~~municipality retain two or more third-party agencies under subsection (b)(2.1).~~

~~(5)~~ (4) A professional services contract entered into between a municipality and a third-party agency on or after the effective date of this subsection may not exceed three years. <--

~~(6)~~ (5) The permit applicant from the municipality shall choose from the third-party agencies approved and contracted by the municipality. The permit applicant may only utilize the services of the permit applicant's selected third-party agency for the services required under this act and associated with the permit applicant's project. <--

(b.2) Waiver.--If a municipality opts to administer and enforce this act under subsection (b)(2.1) but cannot obtain an offer from a third-party agency to fulfill the need to have at least two third-party agencies, the municipality may be relieved from the requirement of retaining two third-party agencies by completing a certification form, subject to the following:

(1) The municipality must complete the certification form before the contract with the selected third-party agency is executed and must maintain the form throughout the life of the contract with the third-party agency.

(2) The certification form must be completed annually.

(3) A copy of the certification form must be filed with the department. The department shall maintain a list of municipalities that have filed a certification form on the department's publicly accessible Internet website.

(4) The department shall furnish the certification form which must:

(i) Require the municipality to disclose the methods

and dates of the public solicitation. For purposes of meeting this requirement, the municipality shall advertise requests for proposals and announce the solicitation at a public meeting.

(ii) Require the municipality to disclose the number of qualified bids received to the public solicitation.

(iii) Contain a statement that the information provided by the municipality is in compliance with 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(iv) Contain a statement that the department does not have the discretion to deny waiver requests.

(b.3) Duties of municipalities.--If a municipality contracts with third-party agencies for the administration and enforcement of this act, the municipality shall:

(1) Ensure that the form utilized for a permit application notifies an applicant of all of the following:

(i) The third-party agency is acting on behalf of the municipality.

(ii) An applicant may inform the governing body of complaints about the third-party agencies' services, including reports of incompetence or gross negligence, a failure to abide by a time period specified under this act, unprofessional behavior or discrimination based on personal bias against the applicant.

(iii) The department certifies third-party agencies and investigates complaints due to violations of this act, incompetence or gross negligence, fraud, deceit or acts of moral turpitude.

(iv) The department has a publicly accessible

Internet website that includes the form for filing a complaint under subparagraph (iii).

(2) Maintain a record of complaints submitted under paragraph (1)(ii).

(c) Board of appeals.--

(1) A municipality which has adopted an ordinance for the administration and enforcement of this act or municipalities which are parties to an agreement for the joint administration and enforcement of this act shall establish or designate a board of appeals as provided by regulations promulgated by the department to hear appeals from decisions of the code administrator[.] subject to the following:

(i) Members of the municipality's governing body may not serve as members of the board of appeals.

(ii) A municipality may establish a board of appeals or may establish or designate a joint board of appeals in accordance with 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation).

(iii) A city of the first class may designate an existing departmental board that has jurisdiction over building standard appeals to act as the board of appeals of the city of the first class and advise the appropriate department that oversees building standards as to whether an appeal should be granted, modified or rejected. The department shall render final decision on requests for appeal.

* * *

Section 2. The department may issue regulations to establish or clarify procedures necessary to effectuate the intent of this

act.

Section 3. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 4. This act shall take effect immediately.