

**NORTH MIDDLETON TOWNSHIP
CUMBERLAND COUNTY, PENNSYLVANIA
ORDINANCE NO. 2019-04**

AN ORDINANCE OF NORTH MIDDLETON TOWNSHIP, CUMBERLAND COUNTY, PENNSYLVANIA PROVIDING FOR AN INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE PURPOSE OF DESIGNATING THE CAPITAL REGION COUNCIL OF GOVERNMENTS JOINT UCC BOARD OF APPEALS AS THE APPROPRIATE BOARD OF APPEALS TO HEAR APPEALS FROM THE TOWNSHIP'S BUILDING CODE

WHEREAS, North Middleton Township (the "Township") is a municipal corporation existing under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Township has, by Ordinance No. 2004-5, codified at Chapter 95 of the Code of the Township of North Middleton (the "Code"), elected to administer and enforce the provisions of the Pennsylvania Construction Code Act, Act 45 of 1999, 35 P.S. § 7210.101 – 7210.1103, as amended from time to time, and Uniform Construction Code, contained at 34 Pa. Code Chapters 401-405, as the Township's Building Code; and

WHEREAS, the Township is required, at Section 95-4 of the Code, to provide for a Building Code Board of Appeals; and

WHEREAS, Section 95-3(C) authorizes the Township to enter into an intermunicipal agreement with one or more other municipalities for the joint administration of the Township's Building Code; and

WHEREAS, the Section 1507 of the Second Class Township Code, 53 Pa.C.S. § 66507, authorizes the Township to enter into agreements with other municipal corporations in performing governmental powers, duties, and functions; and

WHEREAS, the Township desires to abolish its own Building Code Board of Appeals and enter into the attached intermunicipal agreement with the Capital Region Council of Governments ("CapCOG") to allow CapCOG's joint UCC Board of Appeals to serve as the Township's Building Code Board of Appeals.

BE IT ORDAINED AND ENACTED by the Board of Supervisors of North Middleton Township, Cumberland County, Pennsylvania, as follows:

SECTION 1: The Board of Supervisors of North Middleton Township hereby approves, and authorizes and directs its President and Secretary to execute and deliver an Intergovernmental Cooperation Agreement, a copy of which is attached as Exhibit "A," and incorporated by reference as if fully set forth, entitled "Intergovernmental Cooperation Agreement Establishing Joint Board of Appeals" (the "Agreement"). The specific terms, conditions and provisions of the Agreement are made a part of this Ordinance.

SECTION 2: The terms and conditions of the Agreement are those as set forth in the attached Exhibit "A".

SECTION 3: This Agreement shall be in effect for an initial term through December 31, 2019 and shall automatically renew for one (1) year periods every January 1, unless otherwise terminated.

SECTION 4: Pursuant to Section D of Article III of the Agreement, the Township shall pay the appropriate fees to CapCOG necessary to cover the joint UCC Board of Appeals' costs including advertising, stenographic services, solicitor services and other administrative services related to appeals.

SECTION 5: The purpose and objective of the Agreement is for the Township to designate CapCOG's joint UCC Board of Appeals as the appropriate Building Code Board of Appeals for the Township.

SECTION 6: The provisions of this Ordinance are severable and should any section, subsection, clause, sentence or part be held or declared illegal, invalid and unconstitutional by any court of competent jurisdiction, the decision shall not affect nor impair any of the remaining sections, subsections, clauses, sentences or parts. It is hereby declared to be the intent of Borough Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, subsection, clause, or sentence or part had not been included.

SECTION 7: All ordinances or parts thereof inconsistent with the terms of this Ordinance are repealed to the extent of such inconsistency.

SECTION 8: This Ordinance shall become effective immediately.

DULY ENACTED AND ORDAINED this 7th day of November, 2019, by the Board of Supervisors of North Middleton Township in lawful session duly assembled.

Attest:

By: [Signature]

**North Middleton Township
Board of Supervisors**

By: [Signature]
Harry Keiso, Chairman

By: [Signature]
Robert A. Reisinger, Vice-Chairman

By: [Signature]
James E. Hare, Supervisor

By: [Signature]
Denise A. Gembusia, Supervisor

By: [Signature]
Ronald D. Greenway, Supervisor



INTERGOVERNMENTAL AGREEMENT
ESTABLISHING JOINT BOARD OF APPEALS

THIS AGREEMENT, is made this 7th day of November, 2019, by North Middleton Township, Cumberland County, Pennsylvania, a municipality existing under the laws of the Commonwealth of Pennsylvania, hereinafter referred to as the "Party" or the "Municipality".

WITNESSETH:

WHEREAS, the Pennsylvania Uniform Construction Code (UCC) requires that municipalities enforcing the UCC establish a Board of Appeals; and

WHEREAS, the UCC further provides that municipalities may elect to create and participate in a Joint Board of Appeals, if such action is approved by the individual governing bodies of said municipalities; and

WHEREAS, there may be difficulties in fully staffing a Board of Appeals with qualified personnel in each municipality; and

WHEREAS, the Parties desire collectively to associate themselves by virtue of this Agreement to create a Joint Board of Appeals; and

WHEREAS, the Parties have determined that the provision of a Joint Board of Appeals on a regional basis will enhance their ability to safeguard the public health, safety and welfare; and

WHEREAS, cooperation among Municipalities is a proper exercise and discharge of their governmental powers, duties and functions; and

WHEREAS, the parties enter into this Agreement pursuant to Article 9, Section 5, of the Pennsylvania Constitution and Act commonly known as the "Intergovernmental Cooperation Act," 53 Pa. C.S. §2301 *et. seq.*

NOW, THEREFORE, for and in consideration of the mutual promises hereinafter contained, the parties, intending to be legally bound, agree as follows:

ARTICLE I
FORMATION OF JOINT BOARD OF APPEALS
AND APPOINTMENT OF ADMINISTRATOR

SECTION A. Agreement to Cooperate. Pursuant to 53 Pa. C.S. §2301 *et. seq.*, the parties agree to cooperate and associate themselves together for the purpose of creating a Joint Board of Appeals.

SECTION B. Formation of Board. The parties also agree to the formation of a Joint Board of appeals ("Board").

SECTION C. Appointment of Administrator. The administrative functions of the Board shall be under the direction of the Capital Region Council of Governments ("Administrator").

SECTION D. Start Date. The Board shall be formed and organized upon execution of this Agreement by the Municipalities.

SECTION E. Initial "Start Up" Fee. Each member municipality shall pay an initial fee to the Administrator to cover start-up costs associated with the organization and formation of the Board. The Administrator will establish a fee schedule. Fees will be based on the population of the member municipalities. In the event a municipality joins the Board at a later date, such municipality shall pay to the Administrator the appropriate start-up fee at the time the municipality joins the Board, as described in Article V of this Agreement.

ARTICLE II
BOARD MEMBERSHIP

SECTION A. Members and Terms. The Board shall consist of five members, appointed by the Administrator, as follows:

1. One for five years; one for four years; one for three years; one for two years; and one for one year.
2. Thereafter, each new member shall serve for five years or until a successor has been appointed.

The Administrator may replace a Board member with a qualified alternate, or may remove from the Board a member when, in its opinion, such replacement or removal is in the best interest of the Administrator's participating members.

SECTION B. Qualifications. The Board shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees or elected officials in any of the Municipalities.

SECTION C. Vacancies. Any unexpired term on the Board that becomes vacant shall be filled by appointment by the Administrator.

ARTICLE III
REVIEW OF APPEALS/HEARINGS

The Board shall decide appeals, variance requests and requests for extensions of time by reviewing documents and written briefs or arguments unless the Applicant or Applicant's agent requests, in writing, a hearing. When an appropriate written request is received, a hearing will be conducted as follows:

SECTION A. Schedule of Hearings. Board of Appeals Hearings shall be scheduled upon receipt of a proper application for Appeal by any of the Municipalities. Each Municipality shall be responsible for determining the form, procedure and fees for accepting Appeals. Hearings shall be conducted in compliance with the "Sunshine Act", 65 P.S. §271 *et. seq.*, as amended from time to time.

SECTION B. Notice of Hearings. Each Municipality shall be responsible to provide the following:

1. Written notice to Board members of scheduled hearings.
2. Written notice to applicants of scheduled hearings.
3. Public advertisement of hearings as may be required by law or ordinance.

SECTION C. Location of Hearings. Each Municipality shall be responsible to provide meeting space and related facilities necessary to conduct hearings for Appeals, as requested by the Administrator.

SECTION D. Costs. Each municipality agrees to establish appeal fees as determined from time to time by the Administrator and to collect from Appellants and remit to the Board such fees. The appeal fees will be set by the Administrator at a level sufficient to cover the Board's costs for advertising, stenographic services, solicitor services and other administrative services related to the appeals. Each municipality is responsible for its own costs for participating in the appeals including, but not limited to, costs for the presence of its designated representative and the participation of any expert witnesses and/or legal counsel for said appeals. Each municipality agrees to establish and to adhere to such rules and regulations concerning appeals as the Administrator may require to carry out the purposes of this Agreement.

SECTION E. Hearing Records. All minutes, notes and stenographic records of hearings shall become the property of the involved Municipality. Such records shall be open for inspection in accordance with the provisions of the Right-to-Know Act, 65 P.S. § 66.1 *et. seq.*

ARTICLE IV
INSURANCE

SECTION A. Insurance. Administrator shall use its best efforts to secure insurance for the Appeals Board and its members. Upon request of the Administrator, each municipality shall be responsible for paying its pro-rata share of the annual premiums for said insurance coverage, based on the total number of participating municipalities for each premium period and the municipality's population at the time payment is due. In the event of a successful claim against the insurance coverage, each municipality shall be responsible for paying its pro-rata share of any deductible required, based upon the total number of participating municipalities and the municipality's population at the time the payment is due.

ARTICLE V
JOINDER OF MUNICIPALITIES

SECTION A. New Members. Additional municipalities may become parties to this Agreement upon application to and acceptance by the Administrator, approval by a majority of the participating Municipalities, and formal acceptance by the applicant municipality of the provisions of this Agreement, as amended.

ARTICLE VI
TERM

SECTION A. Term. The initial term of this Agreement shall be for a period commencing with the execution of the Agreement through December 31, 2019. The Agreement shall thereafter renew automatically for one-year periods.

SECTION B. Agreement Not to Withdraw. By accepting and signing this Agreement, each party expresses its belief that a Joint Board of Appeals is in the best interest of the member Municipalities, and the parties commit not to withdraw during the initial term of this Agreement.

ARTICLE VII
WITHDRAWAL

SECTION A. Withdrawal. After the initial term of this Agreement, a Municipality may withdraw from the participation in the Board by giving written notice of its intent to withdraw, by certified mail, return receipt requested, to the Administrator and all other parties no later than September 30 of the year preceding the year in which withdrawal shall be effective. If notice of a Municipality's intent to withdraw is timely sent, such withdrawal shall be effective January 1 of the following year.

ARTICLE VIII
ADOPTION OF AGREEMENT

SECTION A. Ordinance. The Municipalities shall advertise and adopt an ordinance authorizing acceptance and adoption of this Agreement, each providing for all action necessary for participation in the Board. Such ordinances shall include provisions abolishing the Municipality's individual Board of Appeals, if applicable.

SECTION B. Compliance with Laws. The ordinance shall comply with the provisions of and be adopted in accordance with the Intergovernmental Cooperation Act and the respective First Class Township, Second Class Township and Borough Codes.

ARTICLE IX
AMENDMENT

This Agreement shall not be amended or modified except by written document, dated and executed by all of the Parties.

ARTICLE X
MISCELLANEOUS

SECTION A. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania.


SECTION B. Headings. The headings, captions, article numbers and section numbers in this Agreement are for convenience and ease of reference only. They shall not limit or restrict the subject matter that precedes or follows them.

SECTION C. Legal Construction. In the event any provision of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid or unenforceable provision had not been included.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this agreement consisting of nine Articles and five pages.

ATTEST:

TOWNSHIP OF NORTH MIDDLETON



Secretary



Harry E. Kelso, Chairman