

BRIAR CREEK BOROUGH
COLUMBIA COUNTY, PENNSYLVANIA

ORDINANCE NO. 149-04

AN ORDINANCE OF BRIAR CREEK BOROUGH, COLUMBIA COUNTY, PENNSYLVANIA OF 2004 AS AMENDED BY ACT 93 OF 1994 PROVIDING THAT IN CERTAIN FIRE LOSSES, THE INSURER HAVING A POLICY WITH RESPECT TO SUCH LOSS SHALL TRANSFER INSURANCE PROCEEDS TO THE TREASURER OF BRIAR CREEK BOROUGH TO BE USED TO PAY DELINQUENT TAXES AND OTHER MUNICIPAL CLAIMS OR HELD AS SECURITY AND USED TO PAY THE TOTAL COST OF REMOVING, REPAIRING, OR SECURING THE DAMAGED BUILDING AND PROVIDING FOR FEES; SETTING FORTH RELATED PROCEDURES TO IMPLEMENT SAID ACT; AND PROVIDING FOR PENALTIES FOR VIOLATION.

BE IT ORDAINED AND ENACTED by the Borough Council of Briar Creek Borough, Columbia County, Pennsylvania, pursuant to the general powers permitted by the Borough Code and Act 93 of 1994 (40 P.S. § 638, *et. seq.*), the following:

SECTION 1: USE OF FIRE INSURANCE PROCEEDS

1. No insurance company, association or exchange (hereinafter "insurer") doing business in the Commonwealth of Pennsylvania shall pay a claim of a named insured for fire damage to a structure located within Briar Creek Borough, Columbia County, Pennsylvania where the amount recoverable for the fire loss to the structure under all policies exceeds \$7,500.00, unless the insurer is furnished by the Treasurer of Briar Creek Borough with a certificate pursuant to Section 508(b) of the Insurance Company Law of 1921, as amended by Act 98 of 1992 and Act 93 of 1994 (collectively the "Act") and unless there is compliance with the procedures set forth in Section 508(c) and 508(d) of the Act.

2. Where there are delinquent taxes, assessments, penalties or user charges against the property ("municipal claims"), or where there are expenses which the Borough has incurred as costs for removal, repair or securing of a building or other structure on the property (collectively "municipal expenses"), the Secretary of the Borough shall immediately render a bill for such work, if not already done. Upon written request of the named insured specifying the description of the property, the name and address of the insurer and the date of receipt by the insurer of a loss report of the claim, the Treasurer of the Borough shall furnish a Certificate within fourteen (14) days after the request to the insurer either:

A. Stating that there are no unpaid municipal claims or municipal expenses against the property; or,

B. Specifying the nature and amount of such claims or expenses, accompanied by a bill for such amounts.

Taxes, assessments, penalties and user charges shall be deemed delinquent for this purpose if a lien could have been filed for such claims under applicable law. Upon receipt of a Certificate and bill pursuant to section 2a, the insurer shall transfer to the Secretary of the Borough an amount from the insurance proceeds sufficient to pay said sums prior to making payment to the named insured, subject to the provisions of subsection 3 hereof.

3. When all municipal claims and municipal expenses have been paid pursuant to subsection 2 of this section or when the Borough Treasurer has issued a Certificate described in subsection 2a indicating that there are no municipal claims or municipal expenses against the property, the insurer shall pay the claim of the named insured - provided, however, that if the loss agreed upon by the named insured and the insurer equals or exceeds sixty percent (60%) of the aggregate limits of liability on all fire policies covering the building or structure, the following procedures must be followed.

A. The insurer shall transfer from the insurance proceeds to the Borough Treasurer, in the aggregate, \$2,000.00 for each \$15,000.00 of such claim or fraction thereof.

B. If at the time a loss report is submitted by the insured, such insured has submitted to the insurer, with a copy to the Borough, a contractor's signed estimate of the cost of removing, repairing or securing the building or other structure in an amount less than the amount calculated under the foregoing transfer formula, the insurer shall transfer to the Secretary of Briar Creek Borough from the insurance proceeds the amount specified in the estimate. If there is more than one insurer, the transfer of proceeds shall be on a pro-rata basis by all insurers insuring the building or other structure.

C. Upon receipt of the above described portion of the insurance proceeds, the Secretary of Briar Creek Borough, Columbia County, Pennsylvania, shall do the following:

i. Place the proceeds in a separate fund to be used solely as security against the total municipal expenses anticipated by the Borough to be required in removing, repairing or securing the building or structure as required by this Ordinance. Such costs shall include, without limitation, any engineering, legal or administrative costs incurred by the Borough in connection with such removal, repair or securing or any proceedings related thereto;

ii. Mail to the named insured at the address received from the insurer a notice that the proceeds have been received by the Borough and that the procedures under this subsection shall be followed;

iii. After the transfer, the named insured may submit to Briar Creek Borough a contractor's signed estimate of the cost of removing, repairing or securing the building or other structure, in which even the Borough Secretary shall, if such estimate is deemed by the Borough Secretary to be reasonable, return to the insured the amount of the funds transferred to Briar Creek Borough in excess of that amount required to pay the municipal expenses; provided, however, that the Borough has not commenced to remove, repair or secure the building or other structure in which case the Borough will complete the work;

iv. Pay to the Secretary of the Borough for reimbursement to the Borough General Fund, the amount of the municipal expenses paid by the Borough;

v. Pay the remaining balance in the fund without interest to the named insured upon receipt of a Certificate issued by the Borough Secretary that the repair, removal or securing of the building or other structure has been completed in accordance with all applicable Codes and Regulations of the Borough;

vi. Nothing in this section shall be construed to limit the ability of the Borough to recover any deficiency in the amount of municipal claims or municipal expenses recovered pursuant to the Ordinance, or to insurance proceeds, by an action at law or in equity to enforce the Borough Codes or to enter into an agreement with the named insured with regard to such other disposition of the proceeds as the Borough may deem reasonable.

SECTION 2. LIMITS OF LIABILITY

Nothing in this Ordinance shall be construed to make an insurance company, association or exchange liable for any amount in excess of proceeds payable under its insurance policy or for any other act performed pursuant to this Ordinance or to make the Borough or any public official of the Borough an insured under a policy of insurance or to create an obligation to pay delinquent property taxes or unpaid removal liens or expenses other than as provided in this Ordinance.

SECTION 3. INSURANCE COMPANY RIGHTS RESERVED

An insurance company, association, or exchange making payment of policy proceeds under this Ordinance for delinquent taxes or structural removal liens or removal expenses incurred by Briar Creek Borough shall have full benefit of such payment including all rights of subrogation and of assignment.

SECTION 4. CONSTRUCTION

This Ordinance shall be liberally construed to accomplish its purpose to deter the commission of arson and related crimes, to discourage the abandonment of property, and to prevent urban blight and deterioration.

**SECTION 5. NOTIFICATION OF PENNSYLVANIA DEPARTMENT OF
COMMUNITY AND ECONOMIC DEVELOPMENT**

The Secretary of Briar Creek Borough shall transmit a certified copy of this Ordinance promptly to the Pennsylvania Department of Community and Economic Development.

SECTION 6. PENALTY

Any owner of property, any named insured, or insurer who violates the provisions of this Ordinance or who shall fail to comply with any of the requirements hereof shall be sentenced upon conviction thereof to pay a fine not greater than \$1,000.00, plus costs and in default of payment of said fine and costs to a term of imprisonment not to exceed thirty (30) days. Each day in which an offense shall continue shall be deemed a separate offense.

SECTION 7. SEVERABILITY

The provision of this Ordinance are severable. If any sentence, clause, or section of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision been included herein.

SECTION 8. EFFECTIVE DATE

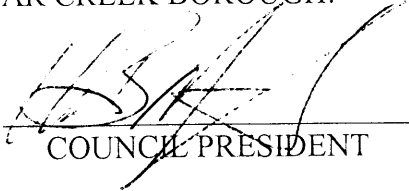
This Ordinance shall take effect five (5) days after the adoption thereof.

SECTION 9. REPEALER

Any Ordinances, or parts of Ordinances, in conflict herewith shall be and is hereby repealed.

ORDAINED AND ENACTED this 3RD day of NOVEMBER, 2004.

BRIAR CREEK BOROUGH:

BY: 
COUNCIL PRESIDENT

ATTEST:


DONALD HARGRAVES, SECRETARY

(SEAL)