

BOROUGH OF AVALON

ORDINANCE NO. 1216

AN ORDINANCE OF THE BOROUGH OF AVALON, COUNTY OF ALLEGHENY AND COMMONWEALTH OF PENNSYLVANIA AMENDING BOROUGH ORDINANCE NO. 1205 AND REQUIRING A MUNICIPAL CERTIFICATION PRIOR TO PAYMENT OF FIRE LOSS CLAIMS OF A NAMED INSURED; PROVIDING FOR DELINQUENT MUNICIPAL TAXES, ASSESSMENTS AND USER CHARGES TO BE PAID OUT OF FIRE INSURANCE PROCEEDS; REQUIRING SOME FIRE INSURANCE PROCEEDS TO BE HELD IN ESCROW BY THE BOROUGH PENDING PROPER RESTORATION, DEMOLITION, OR SECURING OF SUCH PROPERTIES WITHIN THE BOROUGH; ESTABLISHING SEPARATE ESCROW FUNDS FOR THE RECEIPT OF INSURANCE PROCEEDS AS SECURITY; AUTHORIZING CERTAIN PROCEDURES FOR THE HANDLING AND DISTRIBUTION OF INSURANCE PROCEEDS; DESIGNATING THE BOROUGH MANAGER TO MANAGE SUCH FUNDS; ESTABLISHING AN ADMINISTRATIVE FEE FOR THE ISSUANCE OF THE MUNICIPAL CERTIFICATION; REQUIRING THE INSPECTION OF THE PROPERTY PRIOR TO THE RELEASE OF FUNDS; REQUIRING THE RETURN OF UNUSED PROCEEDS TO THE NAMED INSURED, PROVIDING FOR PENALTIES FOR THE VIOLATION THEREOF AND REPEALING ALL INCONSISTENT ORDINANCES.

SECTION 1: ENACTING CLAUSE

Be it ordained and enacted by the Council of the Borough of Avalon and it is hereby ordained and enacted by the authority of the same, that from and after the effective date of this Ordinance, the following Ordinance shall be in full force and effect in the Borough of Avalon.

SECTION 2: SHORT TITLE

This Ordinance shall be known as the Borough of Avalon Fire Escrow Ordinance.

SECTION 3: CONFLICT WITH OTHER ORDINANCES OR REGULATIONS

All Ordinances or parts of Ordinances conflicting herewith are hereby repealed.

SECTION 4: PURPOSE AND INTENTION OF ORDINANCE

This Ordinance is adopted to manage fire-blighted properties, to discourage the abandonment of properties, to prevent urban blight and deterioration and to discourage arson and related crimes in the Borough of Avalon.

SECTION 5: RULES OF CONSTRUCTION

In the construction of this Ordinance, the rules and definitions contained in this Section shall be observed and applied, except when the context clearly indicates otherwise:

- A. Words used in the singular shall include the plural, and the plural the singular.
- B. Words used in the present tense shall include the future tense.
- C. The word "shall" is always mandatory and not discretionary.
- D. The word "may" is permissive.

SECTION 6: DEFINITIONS

BOROUGH: The Borough of Avalon.

BOROUGH MANAGER: The Manager of the Borough of Avalon.

BOROUGH TREASURER: The elected Treasurer of the Borough of Avalon or other appropriate municipal officer authorized to collect real property taxes.

BUILDING INSPECTOR: The person authorized to act as the building official, or any assistant to such person, who enforces the provisions of the Borough Zoning Ordinance.

FIRE DAMAGE: Shall include loss by explosion or lightning.

INSURANCE COMPANY: Includes any company, association or exchange authorized by the Insurance Commissioner to transact the business of insurance in the Commonwealth of Pennsylvania and empowered to issue policies of insurance against loss by the perils of fire or explosion.

MUNICIPAL CERTIFICATE: The certificate furnished to a named insured by the Borough under this Ordinance.

SECTION 7: MUNICIPAL CERTIFICATE REQUIRED PRIOR TO PAYMENT OF FIRE LOSS CLAIMS

A. **Compliance With Procedures.** No insurance company, association or exchange doing business in this Commonwealth shall pay a claim of a named insured for fire damage to a structure located within the Borough of Avalon where the amount recoverable for the fire loss to the structure under all policies exceeds seven thousand five hundred dollars (\$7,500.00) unless the insurance company, association or exchange is furnished with a certificate pursuant to subsection (B) of this Section and unless there is compliance with the procedures set forth in subsections (C) and (D) of this Section.

B. **Written Request By Named Insured For Certificate.**

1. **Issuance of Certificate By Treasurer.** The Borough Treasurer shall, upon the written request of the name insured specifying the tax description of the property, name and address of the insurance company, association or exchange and the date agreed upon by the insurance company, association or exchange and the named insured as the date of the receipt of a proof of loss report of the claim, furnish the named insured insurance company, association or exchange either of the following which shall then be supplied by the named insured to the company, association or exchange within fourteen working days of the request:

(a) **No Delinquent Taxes Or Assessments.**

A certificate, or at the discretion of the Borough, a verbal notification which shall be confirmed in writing by the insurer to

the effect that, as of the date specified in the request, that there are no delinquent taxes, assessments, penalties or user charges against the property and that, as of the date of the Treasurer's certificate or verbal notification, the Borough has not certified any amount as total costs incurred by the Borough for the removal, repair or securing of a building or other structure on the property; or

(b) Delinquent Taxes Or Assessments.

A certificate and bill showing the amount of delinquent taxes, assessments, penalties and user charges against the property as of the date specified in the request that have not been paid as of the date of the certificate and also showing, as of the date of the Treasurer's certificate, the amount of the total costs, if any, certified to the Treasurer that have been incurred by the Borough for the removal, repair or securing of a building or other structure on the property. For the purposes of this subsection, the Borough shall certify to the Treasurer the total amount, if any, of such costs. A tax, assessment, penalty or user charge becomes delinquent at the time and on the date a lien could otherwise have been filed against the property by the municipality under applicable law.

(c) Administrative Fee Must Accompany Written Request. All written requests by a named insured for a certificate shall be accompanied with a fee of Twenty-Five (\$25.00) Dollars to cover the direct and indirect costs incurred by the Borough in processing said request. The Borough Council may, from time to

time by Resolution, either increase or decrease said fee.

2. Receipt of Certificate By Insurance Company.

(a) Payment Of Claim To Named Insured. Upon the receipt of a certificate pursuant to clause (B)(1)(a) of this subsection, the insurance company, association or exchange shall pay the claim of the named insured in accordance with the policy terms, unless the loss agreed to between the named insured and the company, association or exchange equals or exceeds sixty per cent (60%) of the aggregate limits of liability on all fire policies covering the building or other structure. In the case of such a loss, the insurance company, association or exchange, the insured property owner and the Borough shall follow the procedures set forth in subsections (C) and (D) of this Section.

(b) Payment Of Bill To Borough. Upon the receipt of a certificate and bill pursuant to clause (B)(1)(b) of this subsection, the insurance company, association or exchange shall return the bill to the Treasurer and transfer to the Treasurer an amount from the insurance proceeds necessary to pay the taxes, assessments, penalties, charges and costs as shown on the bill. The Borough shall receive the amount and apply or credit it to payment of the items shown in the bill.

C. Procedure When Loss Equals Or Exceeds Sixty Per Centum Of Aggregate Limits Of Liability

1. Payment To Designated Officer. When the loss agreed to between the named insured and the company, association or exchange equals or exceeds sixty per centum (60%) of the

aggregate limits of liability on all fire policies covering the building or other structure, the insurance company, association or exchange shall transfer from the insurance proceeds to the Manager of the Borough in the aggregate two thousand dollars (\$2,000) for each fifteen thousand dollars (\$15,000) and each fraction of that amount of a claim, or, if at the time of proof of loss agreed to between the named insured and the insurance company, association or exchange loss report the named insured has submitted a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure in an amount less than the amount calculated under the foregoing transfer formula, the insurance company, association or exchange shall transfer from the insurance proceeds the amount specified in the estimate.

2. Designation Of Officer To Receive Insurance Proceeds. The Manager of Avalon Borough shall receive all insurance proceeds and manage all escrow funds received under this Ordinance and shall carry out the duties of this Section.

3. Pro Rata Transfer Of Proceeds. Transfer of proceeds shall be on a pro rata basis by all companies, associations or exchanges insuring the building or other structure.

4. Policy Proceeds Remaining. Policy proceeds remaining after the transfer to the Borough shall be on a pro rata basis by all companies, associations or exchanges insuring the building or other structure.

5. Disbursement of Excess Funds. Policy proceeds remaining after the transfer to the Borough shall be disbursed in

accordance with the policy terms.

6. Contractor's Estimate Of Repairs Or Removal. The named insured may submit a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure after the transfer, and the Manager shall return the amount of the fund in excess of the estimate to the named insured if the Borough has not commenced to remove, repair or secure the building or other structure.

7. Application of Subsection. This subsection only applies to fire losses that occur after the adoption of this ordinance.

D. Receipt Of Proceeds By Borough.

1. Establishment Of Separate Escrow Funds. The Borough Manager shall establish separate escrow funds to be held by the Borough to carry out the purposes of this Ordinance.

2. Receipt Of Proceeds By The Borough. Upon receipt of proceeds by the Borough as authorized by this Section, the Manager shall place the proceeds in a separate fund to be used solely as security against the total cost of removing, repairing or securing incurred by the Borough.

3. Transferring of Funds. When transferring the funds as required in subsection (C) of this Section, an insurance company, association or exchange shall provide the Borough with the name and address of the named insured, whereupon the Borough shall contact the named insured, certify that the proceeds have been received by the Borough and notify the named insured that the

procedures under this subsection shall be followed.

4. Inspection Of Property. After the named insured repairs, demolishes or secures the property, the Building Inspector shall inspect the property prior to the Borough releasing any escrow funds. If the named insured properly repairs, demolishes or secures the property, the Building Inspector shall notify the Manager of such completion. If the named insured fails to properly repair, demolish or secure the property, the Borough may chose to do so and the funds escrowed shall be applied to the Borough costs incurred.

5. Completion Of Repairs Or Removal Without Cost To The Borough. The fund shall be returned to the named insured when repairs, removal or securing of the building or other structure have been completed and the required proof received by the Manager if the Borough has not incurred any costs for repairs, removal or securing.

6. Payment Of Costs To Borough From Fund When Borough Has Incurred Costs. If the Borough has incurred costs for repairs, removal or securing of the building or other structure, the costs shall be paid from the fund, and, if excess funds remain, the Borough shall transfer the remaining funds to the named insured.

7. Insufficient Funds To Pay Borough Costs. Nothing in this Ordinance shall be construed to limit the ability of the Borough to recover any deficiency.

8. Other Reasonable Dispositions Permitted. Nothing

in this subsection shall be construed to prohibit the Borough and the named insured from entering into an agreement that permits the transfer of funds to the named insured if some other reasonable disposition of the damaged property has been negotiated.

E. Discharge of Insurance Obligation. Proof of payment by the insurance company, association or exchange of proceeds under a policy in accordance with subsection (C) of this Section is conclusive evidence of the discharge of its obligation to the insured under the policy to the extent of the payment and of compliance by the company, association or exchange with subsection (C) of this Section.

F. No Additional Obligations Created. 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 public official 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.

G. Full Benefit Of Payment. An insurance company, association or exchange making payments of policy proceeds under this Ordinance for delinquent taxes or structure removal liens or removal expenses incurred by the Borough shall have a full benefit of such payment, including all rights or subrogation and of assignment.

H. Liberal 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 8: PENALTY AND REMEDIES

Any person, partnership or corporation who violates any of the provisions of this Ordinance shall upon conviction in a summary proceeding, be fined not less than Three Hundred (\$300.00) Dollars and in default of the payment of the fine and costs, shall be committed to the Allegheny County Jail for a period not to exceed thirty (30) days. Nothing contained herein shall be deemed to preclude the Borough to seek other relief or avail itself of any remedy that may be at law or in equity to prevent continuing violations of the terms of this Ordinance.

SECTION 9: VALIDITY

The provisions of this Ordinance are severable and if any of its provisions or any part of any provisions shall be held unconstitutional or otherwise held to be invalid, the decision of the Court shall not affect or impair any of the remaining provisions. It is hereby declared to be the intent of the Borough Council that this Ordinance would have been enacted had such unconstitutional provisions or parts thereof not been included herein.

SECTION 10. DUTY TO FILE ORDINANCE WITH DEPARTMENT OF COMMUNITY AFFAIRS

The Borough Manager shall file an exact copy of this ordinance with the Department of Community Affairs together with the name, position and phone number of the municipal officer responsible for compliance with this ordinance.

SECTION 11: EFFECTIVE DATE

This Ordinance shall become effective when it is recorded in the Ordinance Book of the Borough.

ORDAINED AND ENACTED into law this 20th day of December, 1994.

ATTEST:

Jean A. Kelsh
Secretary

BOROUGH OF AVALON

Harold J. Marino
President of Council

Examined and Approved by me this 20th day of December, 1994.

Daniel Brimmer
Mayor