

ORDINANCE
NO. 1823

**AN ORDINANCE OF THE CITY OF WARREN, WARREN COUNTY,
PENNSYLVANIA, AUTHORIZING AN INTERGOVERNMENTAL
COOPERATION AGREEMENT FOR A JOINT BOARD OF APPEAL**

WHEREAS, the City of Warren is a Third Class City operating under a Home Rule Charter, having its offices at 318 West Third Avenue, Warren, Pennsylvania, (hereinafter referred to as the “City”); and

WHEREAS, the Commonwealth of Pennsylvania has adopted the Pennsylvania Construction Code Act, Act 45 of 1999, creating the Uniform Construction Code, as amended from time to time (hereafter referred to as the “Act”), and pursuant to the Act, the Pennsylvania Department of Labor and Industry has promulgated regulations contained in 34 Pa. Code Chapters 401-405, as amended from time to time (collectively with the Act hereafter referred to as the “UCC”); and

WHEREAS, the City previously adopted Ordinance No. 1751 for the administration and enforcement of the UCC; and

WHEREAS, the UCC requires that any municipality which has adopted an ordinance for the administration and enforcement of the UCC establish a board of appeals as provided by Chapter 1 of the 1999 BOCA National Building Code, Fourteenth Edition, which board of appeals shall hear appeals from decisions of the code administrator; and

WHEREAS, in addition, the City has entered into various Intermunicipal Agreements with neighboring municipalities by which the City has agreed to provide UCC administration and enforcement services to said neighboring municipalities; and

WHEREAS, said Intermunicipal Agreements provide, among other things, that the City shall establish and appoint members of a Board of Appeals which shall hear and rule on appeals, requests for variances, requests for time extensions, or decisions made by the Building Code Official; and

WHEREAS, the City is desirous of establishing and appointing said Board of Appeals.

NOW, THEREFORE, be it ORDAINED AND ENACTED and it is hereby ORDAINED AND ENACTED as follows:

Section 1. BOARD OF APPEALS.

A Board of Appeals is hereby established by the City in conformity with the relevant provisions of the UCC, as may be amended from time to time, for the purposes set forth therein. The City specifically agrees to create, operate, maintain and fund the Board of Appeals.

Section 2. BASIS FOR APPEALS.

Any application for appeal shall be based on a claim that the true intent of the UCC or regulations legally adopted thereunder have been incorrectly interpreted, that the provisions of the UCC do not fully apply, or that an equivalent form of construction is to be used. Appeals shall not be heard by the Board of Appeals if accessibility requirements are the basis for the appeal.

Section 3. MEMBERSHIP OF BOARD.

Members of the Board shall meet those qualifications set forth in Chapter 1 of the 1999 BOCA National Building Code, Fourteenth Edition, Section 121.2, as may be amended, and shall be residents of either the City or of the municipalities served by the City through the Intermunicipal Agreements referenced above. In the event that the City cannot locate persons who meet these qualifications, the City may fill any vacant position on the Board with a person or persons who reside outside of the City and any of the municipalities served by the City through the Intermunicipal Agreements referenced above. Members of the City's governing body and of a municipality's governing body may not serve as members of the Board of Appeals. A municipality's building code official may not serve as a member of the Board in a capacity that would entitle the building code official to vote; however, the building code official may serve as an ex-officio member of the Board.

In addition, the City has determined that it is necessary and appropriate to appoint two (2) alternate members to the Board of Appeals who shall serve in the event that a sitting member of the Board cannot hear a specific appeal for any reason. The qualifications for alternate members shall be the same as those for sitting members.

Upon appointment to the Board of Appeals, each member shall serve a term which shall range from one to five years and shall be established in accord with the order of appointment (first appointed, one year, etc.). Upon expiration of the initial term, each successive appointment shall be for a term of five years. In the event of a vacancy, a newly-appointed member shall fulfill the remainder of the vacated term. Alternate members shall be appointed for a term of three years.

Section 4. FEES.

The fee for an appeal to the Board of Appeals shall not exceed the actual costs of the public notice of the hearing, appearance fee for the court reporter, and administrative fees as necessary. The administrative fees shall be determined by the fee schedule as adopted annually and as may be amended by the Warren City Council and is available for inspection at the City of Warren Municipal Building, 318 West Third Avenue, Warren, Pennsylvania during regular business hours.

Section 5. APPEALS, VARIANCES, AND EXTENSIONS OF TIME.

- (a) An owner or owner's agent may seek a variance or extension of time or appeal a building code official's decision by filing a petition with the building code official or other person designated by the Board of Appeal on a form provided by the City..
- (b) The postmark date or the date of personal service will establish the filing date of the appeal and request for variance or extension of time.
- (c) An appeal or request for variance or extension of time to the Board of Appeals will automatically suspend an action to enforce a order to correct until the matter is resolved. An action relating to an unsafe building, structure or equipment may not be stayed.
- (d) The Board of Appeals shall decide an appeal, variance request or request for extension of time by reviewing documents and written brief or argument unless the owner or owner's agent requests a hearing.
- (e) The Board of Appeals shall hold a hearing within sixty (60) days from the date of an applicant's request unless the applicant agreed in writing to an extension of time for all matters except the construction of a one- or two-family residential building. The Board of Appeals shall convene a hearing within thirty (30) days of receipt of an appeal or request for variance or extension of time involving the construction of a one- or two-family residential building.
- (f) The Board of Appeals may consider the following factors when ruling upon a request for extension of time or the request for variance:
 - (1) The reasonableness of the UCC's application in a particular case.
 - (2) The extent to which the granting of a variance or an extension of time will pose a violation of the UCC or an unsafe condition.

- (3) The availability of professional or technical personnel needed to come into compliance.
 - (4) The availability of materials and equipment needed to come into compliance.
 - (5) The efforts being made to come into compliance as quickly as possible.
 - (6) Compensatory features that will provide an equivalent degree of protection to the UCC.
- (h) If the owner or owner's agent requests a hearing, the Board of Appeals shall schedule a hearing and notify the owner or owner's agent and building code official of the date, time and place of the hearing.
- (i) The Board of Appeals may:
- (1) Deny the request in whole or in part.
 - (2) Grant the request in whole or in part.
 - (3) Grant the request upon certain conditions being satisfied.
- (j) The Board of Appeals shall provide a written notice of its decision to the owner and to the building code official. The Board of Appeals shall render a written decision regarding an appeal or request for variance or extension of time involving the construction of a one- or two-family residential building within five (5) business days of the latest hearing. The appeal shall be deemed granted if the Board of Appeals fails to act within this time period.

Section 6. SEVERABILITY.

If any section, subsection, sentence or clause of this Ordinance is held for any reason to be invalid, the validity of the remaining portions of this Ordinance shall not be affected.

Section 7. REPEALER.

This Ordinance repeals any prior Ordinances and Resolutions, including Resolution 2628, which is inconsistent herewith.

Section 8. EFFECTIVE DATE.

This Ordinance shall be effective ten (10) days following publication of notice of enactment.

ENACTED AND ORDAINED this 18th day of February, 2013.