

## ORDINANCE NO. 38

**An Ordinance to adopt an Intergovernmental Agreement for Administration and Enforcement of the Uniform Construction Code, for the purpose of appointing a Joint Board of Appeals, to be established and administered by the Erie County Association of Township Officials.**

**WHEREAS**, pursuant to the Pennsylvania Construction Code Act, Act 1999-45, as amended (the “Act”), Mill Village Borough (the “Borough”) has elected to administer and enforce the Uniform Construction Code (the “UCC”) within the Borough; and

**WHEREAS**, under Section 501(c) of the Act, the Borough is required to establish a Board of Appeals to review decisions of the Code Official and review requests for variances; and

**WHEREAS**, under Section 501(c)(3) of the Act, the Borough is empowered to join with other municipalities in the establishment of **a?** Joint Board of Appeals; and

**WHEREAS**, the Erie County Association of Township Officials (“ECATO”) has agreed to establish and administer a Joint Board of Appeals (the “ECATO UCC Board”) to serve as a UCC Board of Appeals for those municipalities within and without Erie County that have chosen to appoint the ECATO UCC Board as their UCC Board of Appeals (the “Member Municipalities”), and

**NOW THEREFORE**, be it resolved by the Borough Council of Mill Village Borough, Erie County, Pennsylvania, and it is hereby resolved as follows:

1. The recitations set forth above are incorporated hereby as if fully set forth.
2. The Intergovernmental Agreement for the Establishment and Administration of a UCC Joint Appeals Board (the “Agreement”) attached hereto as Exhibit IA is hereby approved.
3. The duration and **terms?** of the Agreement shall be perpetual, unless the Borough elects to withdraw from the Agreement as set forth therein, or ECATO cancels the Agreement as set forth therein.
4. The ECATO UCC Board is hereby appointed as the UCC Board of Appeals for the Borough, and shall have all powers, duties, and obligations set forth in the Act and other applicable law.
5. The establishment and administration of the ECATO UCC Board shall be financed as set forth in the Agreement, and the Borough Treasurer is hereby authorized to pay the initial assessment as set forth in the Agreement to ECATO, and such other sums, costs, and fees as set forth in the Agreement.
6. ECATO shall administer the ECATO UCC Board as set forth in the Agreement.
7. The President of Borough Council and the Mayor, attested by the Borough Clerk, are hereby authorized to execute the Agreement on behalf of the Borough.

**ORDINANCE NO. 38**

**DULY ORDAINED AND ENACTED** this 7<sup>th</sup> day of November, 2007, by the Borough Council of the Borough of Mill Village, Erie County, Pennsylvania, in lawful session duly assembled.

ATTEST:

Sally Peters  
Borough Secretary

Kathleen M. Williams  
President of Borough Council

APPROVED this 7<sup>th</sup> day of November, 2007.

Joseph E. Sam  
Mayor of Mill Village Borough

I certify that the above is a true copy of the Borough of Mill Village, Erie County, Pennsylvania, Ordinance No. 38 adopted by the Mill Village Borough Council on November 7, 2007 and properly advertised in accordance with the law.

Sally Peters  
Mill Village Borough Secretary

# 736852

## EXHIBIT IA

### INTERGOVERNMENTAL AGREEMENT FOR THE ESTABLISHMENT AND ADMINISTRATION OF A UNIFORM CONSTRUCTION CODE JOINT BOARD OF APPEALS

**THIS AGREEMENT**, dated as set forth below, is by, among, and between:

MILL VILLAGE BOROUGH (hereinafter the “member Municipality”),

AND

THE ERIE COUNTY ASSOCIATION OF TOWNSHIP OFFICIALS (hereinafter “ECATO”).

#### **WITNESSETH:**

**WHEREAS**, pursuant to the Pennsylvania Construction Code Act, the Act of November 10, 1999, P.L. 495, No. 45, 35 P.S. § 7201.101 *et seq.*, as amended (the “Act”), the Member Municipalities have elected to administer and enforce the Uniform Construction Code (the “UCC”) within their respective municipalities; and

**WHEREAS**, under Section 501(c) of the Act, the Member Municipality is required to establish a Board of Appeals to hear appeals from decisions of the Code Administrator; and

**WHEREAS**, under Section 501(c)(3) of the Act, the Member Municipality is empowered to join with other municipalities in the establishment and administration of a Joint Board of Appeals; and

**WHEREAS**, the Erie County Association of Township Officials (“ECATO”) has agreed to establish and administer a Joint Board of Appeals (the “ECATO UCC Board” or “Board”) to serve as a UCC Board of Appeals for several of its Member Municipalities; and

**WHEREAS**, the Governing Body of the Member Municipality has determined that it is in the best interest of its residents to enter into this Agreement for the establishment and administration of a UCC Joint Board of Appeals, and has enacted an ordinance to the effect, duly appointing the undersigned to execute this Agreement on behalf of the Member Municipality.

**NOW THEREFORE**, intending to be legally bound hereby, the Member Municipality and ECATO hereby agree as follows:

1. The recitations set forth above are incorporated hereby as if fully set forth.
2. This Agreement shall be effective as to the Member Municipality upon execution by the said Member Municipality and ECATO, and its terms shall be perpetual, unless the Borough elects to withdraw from the Agreement, or ECATO elects to cancel this Agreement, as set forth herein.
3. The Member Municipality may withdraw from this Agreement upon written notice delivered to ECATO, and the payment in full of any unpaid fees and assessments as set forth in Paragraphs 11 and 13 of and elsewhere in this Agreement.
4. ECATO may cancel this Agreement upon the later of the delivery date of ninety (90) days’ written notice to every Member Municipality, OR the final resolution of all pending appeals. Notwithstanding any cancellation by ECATO, the Member Municipality shall pay in full any unpaid fees and assessment as set forth in Paragraphs 11 and 13 of and elsewhere in this Agreement.
5. The ECATO UCC Board is hereby appointed as the UCC Board of Appeals for the Member Municipality, and shall have all powers, duties, and obligations set forth in the Act and other applicable law.
6. ECATO shall administer the ECATO UCC Board herein.

## EXHIBIT IA

7. The Board shall be organized and operated according to a certain set of By-laws adopted by or to be adopted by ECATO by resolution, and as amended. A copy of the said By-laws is attached hereto as Exhibit BL.
8. ECATO shall by resolution appoint a Solicitor to advise the Board on all matters that may come before it, at rates of compensation and reimbursement for expenses to be established by ECATO and revised from time to time.
9. ECATO shall by resolution appoint members to the Board in accordance with UCC and the said By-laws, and may by resolution set rates of compensation and reimbursement for expenses of the ECATO UCC Board Members.
10. ECATO shall by resolution appoint a Secretary to the Board and set the rate of compensation and reimbursement for expenses, which Secretary shall fulfill the duties set forth in the By-laws, and other duties as may from time to time be assigned by ECATO and/or the Board.
11. ECATO shall by resolution establish minimal appeal filing fees, from which all administrative fees shall be paid, including but not limited to Member, Secretary, and Solicitor compensation and reimbursements, court reporter appearance fees, legal advertising fees, and all other administrative expenses, and which filing fees shall be adopted by the Member Municipality. Each Member Municipality may in its discretion charge additional filing fees. The Member Municipality shall forward the minimum filing fee to ECATO when it transmits the appeal application to ECATO. If, after all of the above-referenced administrative compensation, reimbursements, and expenses have been paid in full, ECATO shall return the remainder of the filing fee to the Member Municipality wherein the appeal arose. In the event that legislation limits the amount of filing fees that can be charged, or prohibits the charging of filing fees and/or fees to cover the above-referenced administrative compensation, reimbursements, and expenses, the Member Municipality shall be invoiced for and shall pay to ECATO all administrative compensation, reimbursements, and expenses as set forth herein and established hereunder.
12. The Member Municipality shall, within 24 hours or receipt thereof, fax to the ECATO UCC Board Secretary all complete appeal applications received. An application shall not be considered complete unless the Member Municipality has received with the appeal application the minimal filing fee as set forth by ECATO.
13. Upon the signing of this Agreement, the Member Municipality shall pay to ECATO an assessment of \$200.00 to defray the initial expenses of establishing the ECATO UCC Board. Future non-hearing related costs of maintaining the ECATO UCC Board shall be shared equally by and be assessed upon all Member Municipalities at the time such costs are incurred.
14. If any municipality shall execute a subsequent intergovernmental agreement appointing the ECATO UCC Board as its Board of Appeals, the said additional Member Municipality shall pay the assessment set forth in Section 13 above, in full, at the time of the signing of the said subsequent intergovernmental agreement.
15. Any assessments as set forth in Paragraph 13 above paid hereunder shall not under any circumstances be rebated or returned to the Member Municipality or any additional Member Municipality.
16. The Member Municipality may, but is not required to, participate at its own expense in its hearings before the ECATO UCC Board.
17. If any decision of the ECATO UCC Board is appealed to the Common Pleas Court or any other court, the Member Municipality wherein the original case arose shall be responsible for the prosecution of defense of the appeal(s), and the costs thereof, including but not limited to all attorney fees, including the attorney fees of the ECATO UCC Board Solicitor.

## **EXHIBIT IA**

18. This Agreement shall be governed by Pennsylvania Law, and the forum for any dispute arising from this Agreement shall be Erie County, Pennsylvania.
19. This Agreement may be signed in counterparts, and such signing shall not affect the validity hereof.

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## **EXHIBIT BL**

### **BY-LAWS OF THE ERIE COUNTY ASSOCIATION OF TOWNSHIP OFFICIALS JOINT BOARD OF APPEALS PURSUANT TO THE PENNSYLVANIA CONSTRUCTION CODE**

#### **ARTICLE I – GENERAL PROVISIONS**

- 1.1 The Erie County Association of Township Officials (“ECATO”) Joint Board of Appeals (the “ECATO UCC Board”) is hereby created pursuant to the Pennsylvania Construction Code Act, the Act of November 10, 1999, P.L. 491, No. 45, 35 P.S. § 7210.101, *et seq.* (the “Act”), and the Board shall be governed by the said Act and any applicable rules and regulations promulgated thereunder, including 34 Pa. Code § 401.1 *et seq.* (the “Code”).
- 1.2 The members of the Boards shall be familiar with the Uniform Construction Code (the “UCC”), the rules and regulations promulgated thereunder, amendments thereto, local ordinances pertaining thereto, and the policies and practices of the designated Construction Code Official with whom the municipalities that have executed the ECATO Joint Board of Appeals Intergovernmental Agreement (the “Member Municipalities”) have contracted. As used in these By-laws, the terms “Member Municipality” or “Member Municipalities” shall include the terms “Additional Member Municipalities” and “Additional Member Municipality”.
- 1.3 The purposes of the ECATO UCC Board is to hear and rule on appeals, requests for variances, and requests for extension of time in matters coming before the Board under the UCC and the rules and regulations promulgated therefore.
- 1.4 The compensation of the Board is governed by all of the following:
- a. Each member of the Board shall be qualified by training and experience to pass on matters pertaining to building construction, and shall meet the membership requirements of the UCC as existing and as hereafter amended. Specifically, membership shall be comprised of the following:
    - i A registered design professional who is a registered architect or a builder or superintendent with at least ten (10) years’ experience, five (5) of which shall have been in charge of work;
    - ii A registered design professional with structural engineering or architectural experience;
    - iii A registered design professional with mechanical or plumbing engineering experience or a mechanical or plumbing contractor with ten (10) years’ experience, five (5) of which shall have been in charge of work;
    - iv A registered design professional with electrical engineering experience or an electrical contractor with ten (10) years’ experience, five (5) of which shall have been in charge of work’
    - v A registered design professional with fire protection engineering experience or a fire protection contractor with at least ten (10) years’ experience, five (5) of which shall have been in charge of work.
  - b. The governing body of ECATO may appoint up to two (2) alternatives to the ECATO UCC Board who meet any of the five (5) qualifications set forth in Section 1.4(a) above. Alternate(s) shall attend hearings when necessary to make a quorum.

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- c. Each member of the ECATO UCC Board holds office at the pleasure of the governing body of ECATO, and may be removed at any time, without cause.
  - d. Members of the governing body of the Member Municipalities and their Code Administrators may not serve on the ECATO UCC Board.
  - e. ECATO may fill positions on the ECATO UCC Board with qualified persons who satisfy the requirements of Section 1.4(a) above and who reside anywhere within Erie County, there being no requirements that any ECATO UCC Board member live within the boundaries of any Member Municipality.
  - f. In the event that municipalities outside of Erie County enter into **an** the Intergovernmental Municipal Agreement naming the ECATO UCC Board, the membership requirements of Section 1.4(e) above shall be expanded to include persons who reside within the other County.
- 1.5 An ECATO UCC Board member may not cast a vote or participate in a hearing in any appeal, request for variance or request for extension of time in which the member has a personal, professional, or financial interest.
- 1.6 Any meeting of the ECATO UCC Board shall be scheduled and public notice provided of the meeting in accordance with the Pennsylvania Sunshine Act, 65 Pa. C.S. § 701-716.
- 1.7 The ECATO UCC Board may not act upon appeals, requests for variance, or requests for extension of time relating to accessibility under Chapter 11 of the Uniform Construction Code under the Act.

### ARTICLE II – MEMBERS AND DUTIES

- 2.1 The ECATO UCC Board shall, at its organizational meeting and on or about the anniversary thereof, select a Chairperson and Vice-Chairperson of the ECATO UCC Board.
- 2.2 The Chairperson shall perform all duties required by law, ordinance, and these By-laws; shall preside at all meetings and hearing of the ECATO UCC Board; shall decide on all points of order and procedure, subject to the Uniform Construction Code, the rules and regulations promulgated thereunder, all other applicable law, and these By-laws.
- 2.3 The Vice-Chairperson, in the absence, disability, or disqualification of the Chairperson, shall perform all the duties and exercise all the powers of the Chairperson.
- 2.4 The members of the ECATO UCC Board shall be compensated and/or reimbursed for expenses as determined by Resolution of ECATO.
- 2.5 The ECATO UCC Board shall be represented by a Solicitor appointed by ECATO.
- 2.6 ECATO shall appoint a Secretary to the ECATO UCC Board who shall provide administrative support for the ECATO UCC Board, including but not limited to advertising hearings, notifying the parties, the building code official, the ECATO UCC Board members, and the Solicitor of hearing dates and times, and providing hearing materials to the ECATO UCC Board members and the Solicitor.

### ARTICLE III – VACANCIES

- 3.1 The Chairperson shall promptly notify ECATO of any vacancies that occur.



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### ARTICLE IV – APPEALS, VARIANCES AND EXTENSIONS OF TIME

- 4.1 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 particular Member Municipality's building code official or other person designated by the Member Municipality on a form provided to the Member Municipality by ECATO.
- 4.2 The postmark date or the date of personal service will establish the filing date of a complete appeal application or request for variance or extension of time. Any application that does not include the minimal filing fee as set by ECATO shall not be considered complete.
- 4.3 An appeal or request for variance or extension of time to the ECATO UCC Board will automatically suspend an action to enforce an order to correct until the matter is resolved. An action under § 403.84 of the Code (relating to unsafe building, structure or equipment) may not be stayed.
- 4.4 The ECATO UCC Board shall decide an appeal, variance request, or request for extension of time by reviewing documents and written briefs or argument, unless the owner or owner's agent requests a hearing.
- 4.5 The ECATO UCC Board shall hold the hearing or review session within sixty (60) days from the date of an applicant's request, or, in the case of an appeal or request for a variance or extension of time involving the construction of a one-family or two-family residential dwelling, within thirty (30) days, unless the applicant agrees in writing to an extension of time.
  - a. Three (3) members consisting of any combination of seated members and alternate(s) shall constitute a quorum for hearing/review session purposes.
  - b. The actions of at least three (3) members present at a hearing/review session shall be the actions of the ECATO UCC Board.
- 4.6 The ECATO UCC Board shall only consider the following factors when deciding an appeal under Section 501(c)(2) of the Act:
  - a. the true intent of the Act or Uniform Construction Code was incorrectly interpreted.
  - b. the provisions of the Act do not apply.
  - c. an equivalent form of construction is to be used.
- 4.7 The ECATO UCC Board may consider the following factors when ruling upon a request for extension of time of **the a?** request for variance:
  - a. the reasonableness of the Uniform Construction Code's application in a particular case.
  - b. the extent to which the granting of a variance on an extension of time will pose a violation of the Uniform Construction Code or an unsafe condition.
  - c. the availability of professional or technical personnel needed to come into compliance.
  - d. the availability of materials and equipment needed to come into compliance.
  - e. the efforts being made to come into compliance as quickly as possible.
  - f. compensatory features that will provide an equivalent degree of protection to the Uniform Construction Code.

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- 4.8 If the owner or owner’s agent requests a hearing, the ECATO UCC Board shall schedule a hearing and notify the owner or owner’s agent, the building code official, and the Member Municipality of the date, time, and place of the hearing.
- 4.9 The ECATO UCC Board may:
  - a. deny the request in whole or in part;
  - b. grant the request in whole or in part; or
  - c. grant the request upon certain conditions being satisfied.
- 4.10 The ECATO UCC Board shall render a written decision, including any conditions, to the owner, the building code official, and the Member Municipality with **in** five (5) days of the last hearing/review session.
- 4.11 An owner shall file an appeal, request for variance, and/or request for extension of time relating to accessibility with the Accessibility Advisory Board under Section 403.142 of the Code (relating to Accessibility Advisory Board).

ARTICLE V – AMENDMENTS

- 5.1 These By-laws may be amended by ECATO and/or at the request of a majority of the seated members of the Board, which request shall not be unreasonably denied.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007, effective immediately.

ATTEST:

ERIE COUNTY ASSOCIATION OF  
TOWNSHIP OFFICIALS

\_\_\_\_\_  
Martha Sherman, Secretary

\_\_\_\_\_  
Linda Cagnoli, President      Date

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