Note: The model ordinance is on pages 1-9. The balance of the document is legal footnotes that your solicitor may want to review. Chris Gulotta

THIS IS WORKING DRAFT. IT HAS NOT BEEN APPROVED BY ANY ORGANIZATION. ITS FINAL APPROVED VERSION MAY BE DIFFERENT. NO MUNICIPALITY SHOULD ADOPT THIS VERSION OR EVEN THE FINAL APPROVED VERSION WITHOUT CONSULTING WITH ITS SOLICITOR. THE WORKING GROUP DRAFTING THIS MODEL ORDINANCE WOULD APPRECIATE COMMENTS AND SUGGESTIONS. SEND THEM TO: ARNIE KOGAN at: abk@goldbergkatzman.com

Arnold B. Kogan Draft of 5-1-2011 – Synthesis of Comments from Joan E. London and Louis M. Kodumal, Ronald J. Grutza and others and additional references and language changes.

MODEL ORDINANCE TO IMPLEMENT PA. ACT NO. 90-2010

An ordinance amending the [Name of Codified Ordinance] of the [Name of Municipality] by adding [Part of Codified Ordinances Added] to authorize the denial of permits and approvals in accordance with Act No. 90-2010 for serious code violations and to further authorize the recovery of costs and penalties, including attorneys fees or for the abatement or prevention of serious code violation by an action in court to the full extent allowed by that Act while preserving all remedies to the recovery, prevention, abatement or restraint of code violations under other statutes and ordinances.

NOW THEREFORE BE IT ORDAINED BY THE [Name of Governing Body] [Name of Municipality] AND IT IS HEREBY ORDAINED BY AUTHORITY OF THE SAME as follows:

SECTION 1. SHORT TITLE. This Ordinance may be cited as the "[Name of Municipality] Neighborhood Blight Reclamation and Revitalization Ordinance."

SECTION 2. PURPOSE.

This Ordinance is to implement in [Name of Municipality] the provisions of the act of October 27, 2010 (P.L. ____, No. 90), 53 Pa.C.S. Ch. 61, known as the Neighborhood Blight Reclamation and Revitalization Act.

There are deteriorated properties located in [Name of Municipality] as a result of neglect by their owners in violation of applicable State and municipal codes; and

These deteriorated properties create public nuisances which have an impact on crime and the quality of life of our residents and require significant expenditures of public funds in order to abate and correct the nuisances; and

In order to address these situations, it is appropriate to deny certain governmental permits and approvals in order:

(1) To prohibit property owners from further extending their financial commitments so as to render themselves unable to abate or correct the code, statutory and regulatory violations or tax delinquencies.
(2) To reduce the likelihood that this municipal and other municipalities will have to address the owners' neglect and resulting deteriorated properties.
(3) To sanction the owners for not adhering to their legal obligations to the [Name of Municipality], as well as to tenants, adjoining property owners and neighborhoods.

SECTION 3. DEFINITIONS.
The following words and phrases when used in this [Part of Codified Ordinances Added] shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Act." The act of October 27, 2010 (P.L. ____, No. 90), 53 Pa.C.S. Ch. 61, known as the Neighborhood Blight Reclamation and Revitalization Act.

"Building." A residential, commercial or industrial building or structure and the land appurtenant to it.

"Code." A building, housing, property maintenance, fire, health or other public safety ordinance enacted by a municipality.[1] The term does not include a subdivision and land development ordinance or a zoning ordinance enacted by a municipality.[2]

"Court." The Court of Common Pleas of [County in which municipality is located].

"Mortgage lender." A business association defined as a "banking institution" or "mortgage lender" under 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry licensing and consumer protection) that is in possession of or holds title to real property pursuant to, in enforcement of or to protect rights arising under a mortgage, mortgage note, deed of trust or other transaction that created a security interest in the real property.[3]

"Municipality." A city, borough, incorporated town, township or home rule, optional plan or optional charter municipality or municipal authority[4] in this Commonwealth and any entity formed pursuant to the act of Dec. 19, 1996 (P.L. 1158, No. 177), § 1, 53 Pa.C.S. Ch. 23 (relating to intergovernmental cooperation).

"Municipal permits." Privileges relating to real property granted by the [Name of Municipality] that are building permits [cite to Uniform Construction Code Ordinance], Zoning Permits, Special Exceptions, Conditional Uses and Variances granted under the [Name of Municipality's] Zoning Ordinance [cite to Zoning Ordinance provisions] and [Cite also to the Rental License Ordinance, if any, as well as any other ordinance authorizing a municipal permit affecting real property for which the municipality desires deny permits under this Ordinance.]. The term does not include decisions on the

substantive validity of a zoning ordinance or map such a validity variance or the acceptance of a curative amendment.[5]

"Owner." A holder of the title to residential, commercial or industrial real estate, other than a Mortgage Lender, who possesses and controls the real estate. The term includes, but is not limited to, heirs, assigns, beneficiaries and lessees, provided this ownership interest is a matter of public record, including lessees under leases for which a memorandum of lease is recorded in accordance with the act of June 2, 1959 (P.L. 254 (vol. 1), No. 86), 21 P.S. § 405.[6]

"Public nuisance." Property which, because of its physical condition or use, is regarded as a public nuisance at common law or has been declared by the [Codes Official] a public nuisance in accordance with [International Property Maintenance Code adopted by Ordinance ____, [Other Ordinances cited here], or by the Court.[7]

"Remediation plan" A plan for the correction of violations of State law or Code that is part of an agreement between the owner and the municipality in which the real property containing the violations is located[8].

"Serious violation." A violation of a State law or a Code that poses an imminent[9] threat to the health and safety of a dwelling occupant, occupants in surrounding structures or a passersby, that is a building ordered vacated in accordance with the Department of Labor and Industry's Regulations, 34 Pa. Code § 403.84, as amended, implementing the Uniform Construction Code, the act of November 10, 1999 (P.L. 491, No. 45), as amended, 35 P.S. §§7210.101 to 7210.1103; a building placarded as unfit for human habitation so as to prevent its use under the [Name of Municipality's] Property Maintenance Code adopted by Ordinance No. ; or a vacant building whose exterior violates Section 304 of the 2009 ICC Property Maintenance Code adopted Ordinance No. ___, or any successor statute, regulation or Property Maintenance Code][10]

"State law." A statute of the Commonwealth or a regulation of an agency charged with the administration and enforcement of Commonwealth law.

"Substantial step." An affirmative action as determined by a property codes official or officer of the court on the part of a property owner or managing agent to remedy a serious violation of a State law or municipal code, including, but not limited to, physical improvements or repairs to the property, which affirmative action is subject to appeal in accordance with applicable law.

"Tax delinquent property." Tax delinquent real property as defined under:
(1) the act of July 7, 1947 (P.L. 1368, No. 542), known as the Real Estate Tax Sale Law;
(2) the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Act; or

(3) the act of October 11, 1984 (P.L. 876, No. 171) known as the Second Class City Treasurer's Sale and Collection Act, located in any municipality in this Commonwealth
(4) or any successor law to any of the above statutes.[11]

"Uniform Construction Code." The act of November 10, 1999 (P.L. 491, No. 45), as amended, 35 P.S. §§7210.101 to 7210.1103 as implemented by Ordinance No. .

SECTION 4. ACTIONS AGAINST OWNER OF PROPERTY WITH SERIOUS CODE VIOLATIONS.
a. Actions.
In addition to any other remedy available at law or in equity, the [Name of Municipality] may institute the following actions against the owner of any real property that is in serious violation of a code or for failure to correct a condition which causes the property to be regarded as a public nuisance:
(1)(i) An in personam action may be initiated for a continuing violation for which the owner takes no substantial step to correct within six months following receipt of an order to correct the violation, unless the order is subject to a pending appeal before the administrative agency or court.
(ii) As authorized by the Act, the [Name of Municipality] reserves the right to recover in a single action under this section, an amount equal to any penalties imposed against the owner and any costs of remediation lawfully incurred by or on behalf of the municipality to remedy any code violation.
(2) A proceeding in equity.

b. Asset attachment.
(1) General rule.--A lien may be placed against the assets of an owner of real property that is in serious violation of a code or is regarded as a public nuisance after a judgment, decree or order is entered by a court of competent jurisdiction against the owner of the property for an adjudication under section 4.a (relating to actions).
(2) Limitations under the Act.--In proceedings under the Act, except as otherwise allowed by law, where the owner is an association or trust no lien shall be imposed upon the individual assets of any limited partner, shareholder, member or beneficiary of the owner.[12]

c. Reservation of rights and remedies under law other than the Act. The [Name of Municipality] reserves all rights and remedies existing under statutes other than the Act, its ordinances implementing them, and applicable case law to obtain recovery for the costs of preventing and abatement of code violations and public nuisances to the fullest extent allowed by law[13] from mortgage lenders;[14] trustees, and members of liability companies, limited partners who provide property management services to the real property as well as general partners of owners; and officers, agents, and operators that are in control of a property as an owner or otherwise hold them personally responsible for code violations as well as owners themselves. Such owners, mortgage lenders, partners,[15] members of limited liability companies, trustees, officers, agents and operators in control of a real property with code violations shall be subject to all actions at law and in equity to the full extent authorized by such statutes, ordinances and applicable case law. Such

action may be joined in one lawsuit against responsible parties with an action brought under the Act.

SECTION 5. DENIAL OF PERMITS.

a. Permit Application Form

(1) In addition to the requirements set forth in the governing ordinance, regulations or rules for the specific municipal permit being applied for under the ordinances referenced in the definition of "municipal permit" in Section 3, all applications for a municipal permit shall include: [16]

(a) If the owner is an individual, the home address of the owner.

(b) If the owner is an entity, its registered office and principal place of business, type of entity, in what state it was formed, and whether the entity has qualified to do business as a foreign entity in Pennsylvania by filing with the Corporation Bureau of the Pennsylvania Department of State under title 15 of the Pennsylvania Consolidated Statutes.[17] [The home address of at least one responsible officer, member, trustee, or partner shall be also be included.][18]

(c) The applications shall also include a provision requiring the owner[19] to disclose real properties owned by the owner both inside of the [Name of Municipality] as well as in all other municipalities of the Commonwealth:

(i) in which there is a serious violation of State law or a code and the owner has taken no substantial steps to correct the violation within six months[20] following notification of the violation

(ii) and for which fines or other penalties or a judgment to abate or correct were imposed by a magisterial district judge or municipal court, or a judgment at law or in equity was imposed by a court of common pleas;

(iii) and real property owned in the Commonwealth by the owner for which there is a final and unappealable tax, water, sewer or refuse collection delinquency on account of the actions of the owner. This provision shall require the owner to disclose the street address, tax parcel number, municipality, and county of each such real property. The provision shall require the disclosure be under penalty as provided in 18 Pa.C.S. § 4904(a) for an unsworn falsification to a government officer or employee (public servant) performing official functions.[21]

(2) All applicants for a municipal permit shall accurately complete the Permit Applicant Disclosure Form as from time-to-time adopted by Resolution of the [City Council][22] [Board of Supervisors] [Borough Council] subject to a penalty as described in 18 Pa.C.S. § 4904.

b. Municipal Permit Denials and Appeals

(1) Permit Denial.

(a) The [Title of Codes Official], or the [Zoning Hearing Board] [Zoning Board of Adjustment] under subsection 5.b(1)(f), [may][23] [shall] deny issuing to an

applicant a municipal permit if the applicant owns real property in any municipality for which there exists on the real property:

(i) a final and unappealable tax, water, sewer or refuse collection delinquency on account of the actions of the owner; or

(ii) a serious violation of State law or a code and the owner has taken no substantial steps to correct the violation within six months following notification of the violation and for which fines or other penalties or a judgment to abate or correct were imposed by a magisterial district judge or municipal court, or a judgment at law or in equity was imposed by a court of common pleas. However, no denial shall be permitted on the basis of a property for which the judgment, order or decree is subject to a stay or supersedeas by an order of a court of competent jurisdiction or automatically allowed by statute or rule of court until the stay or supersedeas is lifted by the court or a higher court or the stay or supersedeas expires as otherwise provided by law. Where a stay or supersedeas is in effect, the property owner shall so advise the municipality seeking to deny a municipal permit.

(b) [Title of Codes Official] or [Zoning Hearing Board] [Zoning Board of Adjustment] shall not deny a municipal permit to an applicant if the municipal permit is necessary to correct a violation of State law or a code, provided all other conditions for the issuance of a municipal permit have been met.[24]

(c) The municipal permit denial shall not apply to an applicant's delinquency on taxes, water, sewer or refuse collection charges that are under appeal or otherwise contested through a court or administrative process.

(d) In issuing a denial of a municipal permit based on an applicant's delinquency in real property taxes or municipal charges or for failure to abate a serious violation of State law or a code on real property that the applicant owns in this Commonwealth, the [Title of Codes Official] or board shall issue the denial in writing and indicate the street address, municipal corporation and county in which the property is located and the court and docket number for each parcel cited as a basis for the denial. The denial shall also state that the applicant may request a letter of compliance from the appropriate State agency, municipality or school district, in a form specified by such entity as provided in the Act. The denial shall be delivered by U.S. Certified, Registered, or Express Mail, Return Receipt Requested[25] [and such receipt is obtained or delivery refused]; personal service in manner provided by the Pennsylvania Rules of Court for Civil Procedure for original process;[26] hand delivery by a member of the codes enforcement staff; or a private delivery service that provides for a receipt [and such receipt is obtained or delivery refused].

(e) The information on the real property forming the basis for a municipal permit denial may be obtained by [Title of Codes Official], or other employee or agent of [Name of Municipality] from the information disclosed by the owner in accordance with Section 5.a. or any other reliable information obtained through a search of records using governmental systems online or through direct contact with the office maintaining the systems such as the court docket systems maintained by the Administrative Office of the Pennsylvania Courts, county/city department of records, offices of the recorder of deeds, municipal and county tax collectors and treasurers, county tax claim bureaus, prothonotary and clerk of court, private online fee based search services, and free searches on the Internet.[27] Prior to making a determination on whether to deny a

municipal permit, the [Title of Codes Official] or [Zoning Hearing Board] [Zoning Board of Adjustment] using the services of the Zoning Administrator or other municipal staff or contracted service provider may conduct a search using the sources described in this Subsection 5.b(1)(e).[28]

(f) [Zoning Hearing Board] [Zoning Board of Adjustment]

(i) Municipal permits may be denied by a board in accordance with the requirements of this section to the extent that approval of the municipal permit is within the jurisdiction of the board. For purposes of this section, "board" shall mean a [the [Name of Municipality] Zoning Hearing Board] [[Name of Municipality and Name of Other Municipality] Joint Zoning Hearing Board[29]] granted jurisdiction to render decisions in accordance with the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code] [City of Pittsburgh Zoning Board of Adjustment] [City of Philadelphia's Zoning Board of Adjustment].

(ii) In any proceeding before a board other than the governing body of the municipality, the municipality may appear to present evidence that the applicant is subject to a denial by the board in accordance with this section.

(iii) For purposes of this subsection, a municipal permit may only be denied to an applicant other than an owner if:

(A) the applicant is acting under the direction or with the permission of an owner; and

(B) the owner owns real property satisfying the conditions of Subsection 5.b(1)(a).

(3) Applicability of other law.--A denial of a municipal permit shall be subject to the provisions of 2 Pa.C.S. Chs. 5 Subch. B (relating to practice and procedure of local agencies) and 7 Subch. B (relating to judicial review of local agency action) or the Pennsylvania Municipalities Planning Code, for denials subject to the act.[30]

(g) The [Title of Codes Official] or [Zoning Hearing Board] or [Zoning Board of Adjustment] shall review the Disclosure Form and the searches, if any, in accordance with Subsection 5.b(1)(e) prior to any plan or construction reviews or inspections to determine if such a review or inspection is unnecessary due to a municipal permit being denied under this Subsection 5.b.[31]

(h). Right of appeal. The owner shall have a right to appeal the denial of a municipal permit in accordance with the applicable law governing such municipal permit. In the case of a denial by the [Title of Codes Official], the appeal shall be made with 30 days of the denial to the Board of Appeals established under the Uniform Construction Code unless the owner has submitted to the Board of Appeals proof before the expiration of the 30 days that the owner is seeking proof of compliance under Section 5(b)(2), which case the municipal permit and the denial shall be held in abeyance until the forty-five day period for obtaining proof of compliance under Subsection 5(b)(2) has expired.[32] In case of a denial by the [[Name of Municipality] Zoning Hearing Board] [[City of Philadelphia] [City of Pittsburgh] Zoning Board of Adjustment], the appeal shall be to the court of common pleas.

(i) With respect to a denial under the grounds authorized by the Act, the denial may only be reversed for the following reasons:

(A) An authentic proof of compliance letter in accordance Subsection 5(b)(2).

(B) Evidence of substantial steps taken to remedy a serious violation set forth on the denial confirmed by an order of the Court or the [Title of Codes Official].

(B) Evidence of an approved remedial plan to address a serious violation set forth on the denial.

(C) Evidence of a timely appeal or administrative contest of a tax, water sewer, or refuse collection delinquency.

(D) A failure of a state agency, school district or municipality to issue a proof of compliance within 45 days of a request.

(E) A failure of a state agency or municipality to provide the relief required under section 6144 of the Act to an heir or devisee.

(F) Any other verifiable evidence that establishes by a preponderance of the evidence that a serious violation or collection delinquency of tax, water, sewer, or refuse accounts does not exist.

(ii) With respect to denials for reasons other than the those authorized by the Act, the provisions of the Uniform Construction Code or applicable zoning law shall govern.

[The owner shall be informed of the right, time and place to make an appeal.][33]

(2) Proof of compliance.--

(a) All municipal permits denied in accordance with this subsection shall[34] be withheld until an applicant obtains a letter from the appropriate State agency, municipality or school district indicating the following:

(i) the property in question has no final and unappealable tax, water, sewer or refuse delinquencies;

(ii) the property in question is now in State law and code compliance; or

(iii) the owner of the property has presented and the appropriate State agency or municipality has accepted a plan to begin remediation of a serious violation of State law or a code. Acceptance of the plan may be contingent on:

(A) Beginning the remediation plan within no fewer than 30 days following acceptance of the plan or sooner, if mutually agreeable to both the property owner and the municipality.

(B) Completing the remediation plan within no fewer than 90 days following commencement of the plan or sooner, if mutually agreeable to both the property owner and the municipality.

(b) In the event that the appropriate State agency, municipality or school district fails to issue a letter indicating tax, water, sewer, refuse, State law or code compliance or noncompliance, as the case may be, within 45 days of the request, the property in question shall be deemed to be in compliance for the purpose of this section,[35] [provided a copy of the request has been delivered to the municipality where the municipal permit has been applied for in accordance with Subsection 5.b(2)(d)]. The appropriate State agency, municipality or school district shall specify the form in which the request for a compliance letter shall be made.

(c) Letters required under this section shall be verified by the appropriate municipal officials before issuing to the applicant a municipal permit.

(d) An owner seeking to obtain a proof of compliance in order to obtain a municipal permit that would otherwise be denied shall submit a copy of the owner's request for proof of compliance within five days of the date that request is sent to the appropriate State agency, municipality or school district, to the municipality from which a municipal permit is sought or submit the copy of the request with the application for the municipal permit if such application is made at a later date.[36]

SECTION 6. MISCELLANEOUS.

a. Conflict with other law

In the event of a conflict between the requirements of this Ordinance and Federal requirements applicable to demolition, disposition or redevelopment of buildings, structures or land owned by or held in trust for the Government of the United States and regulated pursuant to the United States Housing Act of 1937 (50 Stat. 888, 42 U.S.C. § 1437 et seq.) and the regulations promulgated thereunder, the Federal requirements shall prevail.

b. Relief for inherited property

Where property is inherited by will or intestacy, the devisee or heir shall be given the opportunity to make payments on reasonable terms to correct code violations or to enter into a remediation plan in accordance with Section 6131(b)(1)(iii) of the Act and Subsection 5.b(2)(a)(iii) (relating to municipal permit denial) with [Name of Municipality][37] to avoid subjecting the devisee's or heir's other properties to asset attachment or denial of permits and approvals on other properties owned by the devisee or heir.

SECTION 7. REPEALER

All ordinances or parts of ordinances in conflict herewith be and are hereby repealed, except any ordinance or parts of ordinances that authorize greater remedies than this Ordinance are preserved.

SECTION 8. SEVERABILITY

The provisions of this Ordinance shall be severable and if any of its provisions are found to be unconstitutional or illegal the validity of any of the remaining provisions of this Ordinance shall not be affected thereby.[38]

SECTION 9. EFFECTIVE DATE

This Ordinance shall take effect in [accordance with the law] [___ days][39].

APPENDIX 1
Permit Applicant Disclosure Form

The following paragraph shall be added to Permit Applications to comply with this Ordinance.

> The owner/applicant under penalty as provided in 18 Pa.C.S. § 4904(a) for an unsworn falsification to a public servant such as the Codes Enforcement Officer or Zoning Administrator of [this municipality or Name of Municipality], swears or affirms that the owner/applicant owns no real property in which there is a serious violation of State law or a municipal code and for which the owner has taken no substantial steps to correct the violation within six months following notification of the violation and for which fines or other penalties or a judgment to abate or correct were imposed by a magisterial district judge or municipal court, or a judgment at law or in equity was imposed by a court of common pleas, or a final and unappealable tax, water, sewer or refuse collection delinquency on account of any action of the owner with respect to any real property owned by the owner/applicant in the Commonwealth, except as follows:

[Insert word "NONE" and initial if there are no such properties, but if there are such properties list the street addresses of such properties, their tax parcel numbers, and the municipalities and counties in which such properties are located.]

In order to avoid a municipal permit denial, an owner may seek a proof of compliance letter from the municipal where tax, water, sewer or refuse collection delinquency existed but is now satisfied or where there is a serious code violation that has been timely abated or the owner has entered into a remediation plan with the municipality where the real property is located.

ADDENDUM 1 TO MODEL ORDINANCE
Senate Bill No. 900, Printer's No. 1176, Session of 2010
(Original Version of Bill as Introduced)

Page 4 of Bill, Line 10 thru Page 4 of Bill, Line 14:

Definition of Blighted Property:[40]

"Blighted property." Any of the following:

(1) Premises which, because of physical condition or use, have been declared by a court of competent jurisdiction as a public nuisance at common law or have been declared a public nuisance in accordance with the local housing, building, plumbing, fire and related codes and ordinances, including nuisance and dangerous building ordinances.[41]

(2) Premises which, because of physical condition, use or occupancy, are considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations and unsafe fences or structures.

(3) A dwelling which, because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required under the housing code of the municipality, has been designated by the municipal department responsible for enforcement of the code as unfit for human habitation.

(4) A structure which is a fire hazard or is otherwise dangerous to the safety of persons or property.[42]

(5) A structure from which the utilities, plumbing,

heating, water, sewage or other facilities have been disconnected, destroyed, removed or rendered ineffective so that the property is unfit for its intended use.[43]

(6) A vacant or unimproved lot or parcel of ground in a predominantly built-up neighborhood which, by reason of neglect or lack of maintenance, has become a place for accumulation of trash and debris or a haven for rodents or other vermin.

(7) An unoccupied property which has been tax delinquent for a period of two years.[44]

(8) A property which is vacant but not tax delinquent and which has not been rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.[45]

[1] Because the term "Code" here could be referring to another municipality's codified ordinances adopting the UCC or a property maintenance code, reference to the adopting municipality's municipal code is not appropriate.

[2] Many of the property issues addressed by this Ordinance are violations of the municipality's zoning ordinance, as well as Codes, with the prime example being a property containing so much junk and debris that it constitutes a junkyard, which is a zoning issue, as well as violations of lighting ordinances, which are also often in zoning. This definition is verbatim from Act 90. Thus a violation of a zoning ordinance may not be a basis for denial of a municipal permit; however, under section 6131 of the Act, a zoning permit may be denied where there is a serious code violation. Junk can be addressed in a property maintenance code; or alternatively, abated as a nuisance. See *Commonwealth v. Nicely*, 988 A.2d 799 (Pa. Cmwlth. 2010). Zoning was excluded here, because the drafters of the Act believed that under the MPC there were sufficient enforcement provisions and that the blight elimination focus should be on the abatement of building and property maintenance code violation.

[3] This definition is taken verbatim from the definition in section 6103 of the Act. 53 P.S. § 6103. It excludes the application of the Act to Mortgage Lenders as defined in this definition. Because of the savings provisions in the Act, it has no affect on the application of existing statutes, ordinances and case law as to actions brought under those statutes, ordinances and applicable case law. However, existing law as interpreted by the courts prohibits the denial of permits based upon Code violations for all owners and those in control except with respect to the property directly affected, the savings provisions do not authorize the denial of permits to Mortgage Lenders. See *Trigona v. Lender*, 926 A.2d 1226 (Pa. Cmwlth. 2007), petition for appeal denied, 596 Pa. 721, 944 A.2d 766 (2009); and *Commonwealth v. Hoffman*, 938 A.2d 1157 (Pa. Cmwlth. 2007), holding that a municipality has no authority under existing law (prior to the enactment of Act No. 90-2010), to deny permits based on unpaid taxes and sewer fees. However, there was and still is specific statutory authority under the Real Estate Tax Sales Law, 72 P.S. § 5860.619, 53 P.S. § 7283 (b.1) thru (b.4), 72 P.S. § 5860.601(d) and (e), to prohibit purchase at tax sales by persons who have outstanding code violations.

[4] It was suggested to delete "municipal authority" from this definition, as this ordinance applies to private properties only, and would not be applicable to the property of a municipal authority. This definition is verbatim from the Act. In addition, the inclusion of "municipality authority" was intended to include entities that could be given code enforcement power. The inclusion of a "municipal authority" here does not create a basis for subjecting the municipal authorities' properties to the enforcement provisions of the Act.

[5] The definition in the Act of "municipal permit" includes "exceptions to zoning ordinances and occupancy permits." This use of the word "exceptions was in ordinary broader meaning and intended by the drafters to mean "Special Exceptions, Conditional Uses, or Variances from Zoning Ordinances." But the language second sentence of this definition that excludes "decisions on the substantive validity of a zoning ordinance or map" from the application of the Act was intended to mean "validity variances." Rather than merely copying the Act's definition, this definition in the Ordinance should add the more concrete language to aid in interpreting the Act without exceeding its limits. Specifically, for this definition, the municipality should provide a comprehensive list of all types of approvals that are within the scope of the statutory definition. This will provide customized certainty to the applicant, and avoid any future "surprises." Thus, "bracket language," is a note to the solicitor or drafter to establish a discrete, closed-end list of approvals that are the subject of denial. This list should cross-reference the provisions of the municipal codes in which the permits are found.

[6] It was suggested the definition of owner should include tenants under long-term leases or leases with option to purchase, or even any tenant who occupies a property under a lease (e.g., triple net) which requires that the tenant be responsible for maintenance. For a person to be included as an owner the Act

requires that person's interest to be a matter of public record. For this reason the language referencing the statute on memorandums of lease is added here. As to the liability of the lessor (owner) see *Commonwealth of Pennsylvania and Marlborough Township v. Edward Deloach and Marie Deloach* (husband and wife), 714 A.2d 483 (Pa. Cmwlth. 1998), *infra* note 131~~3~~14. Beneficiaries that are listed in a testamentary trust that is of public record because the will is probated, could also be considered to have their interests of public record if their interests are disclosed as part of the administration of the estate. Beneficiaries of trusts that are not testamentary trusts not have their interests as matter of public record. In the case of such trusts as is the case of all trusts, under section 6114 of the Act the trust itself can be served and its assets subject to the enforcement provisions of the Act as is the case with other owners. In addition, the trustee as a person in control could also be subject to the Act because section 6112(b), defers to existing law with respect to a trustee's liability. See section That existing law includes the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. §7780.6(a)(5). Under that provision a trustee may abandon property that is worthless or subject to an environmental or other liability, at least for state law purposes. See trustee's protection against personal liability under 15 Pa.C.S. § 9506(a)(2); however, compare Uniform Trust Code, 20 Pa.C.S. § 7790(b). These statutory provisions are not likely, however, to limit liability as to fines and penalties under the Crime Code and would not likely even insulate a trustee from civil liability under existing housing codes and their authorizing statutes, because the trust controls the property. *See also Lohr Estate*, 3 D. & C.3d 307 (Pa. C.P. Somerset Cty.1977), regarding executors of estates.

[7] It has been suggested that definition of public nuisance in this Ordinance include a property has become dangerous or dilapidated, or has serious violations, so as to become a threat to public health, safety, and welfare. This is the definition verbatim in the Act. A Public Nuisance is a second basis for an attachment (civil action for costs of abatement and lien on all of owner's assets) and the civil action is already allowed by current statutes and ordinances, but a Public Nuisance is not a Permit Denial under section 6131(a)(1)(ii) of the Act. Since the additional language suggested is essentially incorporated in this Ordinance definition of "Serious Violation", and dangerous building provisions of the Uniform Construction Code and implementing regulations and the International Property Maintenance Code make those type of buildings a public nuisance, the suggested language would appear not be adding much, as the language may be too general. It is recommended instead that additional concrete examples be added to the definition of "Serious Violation" such in the bracketed language in that definition to aid in the understanding of the concept of a public nuisance. There are numerous cases of public nuisance from which could be extracted additional examples.

In addition, references should be made to the provisions of the municipality's Property Maintenance Code and other ordinances that have declared what is a public nuisance.

Without a closed set of concrete violations that justify denial of permits, the owner must conduct his or her own "legal synthesis" of what constitutes a serious violation when filling out the disclosure statement in Section 5a. Under penalty of false swearing, there is a constitutional due process issue if the municipality gets to decide whether or not he or she lied based on the municipality's own interpretation of whether an adjudication was related to a "serious violation."

As to "public nuisance", *see, e.g.*, *Com., Office of Atty. Gen. ex rel. Corbett v. Richmond Twp.*, 2 A.3d 678 (Pa. Cmwlth. 2010)(Township Zoning Ordinance violated Right to Farm Law (RFL), which required that municipalities prohibiting public nuisances exclude normal agricultural operations so long as such operations had no direct adverse effect on the public health and safety); *Diess v. Pennsylvania Dept. of Transp.*, 935 A.2d 895 (Pa.Cmwlth.2007)(owner of power plant did not have control of embankment built with power plant fly ash, as required in order for landowners to maintain a public nuisance claim against owner); *Machipongo Land and Coal Co., Inc. v. Com.*, 569 Pa. 3, 799 A.2d 751 (Pa.2002) (matter remanded to Commonwealth Court to determine under Section 821B of the RESTATEMENT (SECOND) OF TORTS and other factors as to whether proposed use of watershed area would constitute a nuisance); *Groff v. Borough of Sellersville*, 12 Pa.Cmwlth. 315, 314 A.2d 328 (1974)(analyzing the concept of nuisance and comparing public versus private nuisance). A violation of a zoning ordinance, however is not a nuisance per se. *Dressel Associates, Inc. v. Beaver Valley Builders Supply, Inc.*, 778 A.2d 800 (Pa. Cmwlth. 2001).

[8] There is no definition of a Remediation Plan in the Act although the term is used section 6113(b)(1)(iii). The definition in this Ordinance is derived from its use in the Act.

[9] The word "imminent" is in the definition of "Serious Violation" in the Act and was added in substitution of the word "immediate" by the House Urban Affairs Committee when it was reported out as Senate Bill No. 900, Printer's No. 2239. This was done to conform the language to terminology used in code enforcement, particularly in connection with the vacation and abatement of code violations of dangerous buildings, and describes the situation where harm is likely to occur in a very short space of time. The vacation of the building shall not be considered to have removed the imminence of danger so as to no longer be treated as a "serious violation." It is also not necessary that the municipal codes official have ordered the vacation of the building under the emergency powers granted under Section 109 of the International Property Maintenance Code or the regulations of the Pennsylvania Department of Labor and Industry, 34 Pa. Code § 403.84.

[10] Because a "serious violation" of municipal code is the only basis for denying a Municipal Permit besides the unpaid and unappealed water, sewer, and refuse account delinquencies, the Act's definition of "serious violation" sets the limits for municipal permit denials and received considerable attention by various stakeholders and members of the General Assembly and their staff during the development and passage of the Act. See Appendix 1 which contains an extract of Senate Bill No. 900, Printer's No. 1176, which was amended and became Act No. 90 of 2010. While concrete examples within the reasonable scope of the language of the Act such in the bracketed language will aid in its interpretation, the insertion of language that would increase the basis for municipal permit denial beyond that which can be reasonably inferred from the language of the act is not likely to be upheld by the courts. Many of the items that result in the declaration and vacation as an unsafe building under either the Uniform Construction Code as implemented by the regulations of the Pa. Department of Labor and Industry or the International Property Maintenance Code, free access on the Internet at http://publicecodes.citation.com/icod/ipmc/IC-P-2009-000010.htm?bu2=IC-P-2009-000019, could meet the above definition. See http://www.iccsafe.org/Store/Pages/FreeCodes.aspx for access to most of the ICC Codes. The vacation of the building, however, is a clear line of demarcation for determination of what is a "serious violation" within the meaning of the Act. The addition of Section 304 of the 2009 International Property Maintenance Code is to address concerns of municipalities and the Commonwealth as set forth in the Legislative Findings and Purpose of the Act, 53 Pa.C.S. § 6102, to avoid blight and substantial costs to municipalities to abate the violations of deteriorating structures. Buildings that are open to the weather elements such as from roof leakage will deteriorate and suffer the loss of structural integrity and be subject to the danger of a sudden, unexpected collapse resulting in injury to occupants in surrounding structures or a passerby. Roof leakage and other exposure to the weather of the structural elements of an occupied building also places its occupants in danger from a sudden collapse and has serious affect on the health of the building's occupants from exposing them to mold. See 2009 INTERNATIONAL PROPERTY MAINTENANCE CODE® COMMENTARY pp. 3-5 thru 3-10 (2010).

See the following cases in explanation of the added highlighted (in gray) language that is not in Act No. 90's definition of a "Serious Violation": *Jacqueline Drake, Lawrence Drake and Drake's Personal Care Home v. Department of Public Welfare*, 2009 Pa. Commw. Unpub. LEXIS 698 (Pa. Cmwlth. 2009) (missing or inaccurate fire drill logs not an "imminent threat"); *Jochen v. Horn*, 727 A2d 645 (Pa. Cmwlth. 1999) (mere existence of violations in which L&I granted variances or extensions of time to comply did not present an imminent threat to health and safety); *Sherwin-Williams Co. v. City of Hamtramck*, 840 F.Supp. 470 (W.D. Mich., 1993) (tests and cleanup activity of ground for contaminants over a five year period mitigates against a finding of an "imminent threat"); *U.S. v. Vertac Chemical Corp.*, 33 F.Supp.2d 769 (E.D. Ark., 1998) (finding of "imminent threat" contra to the *Sherwin-Williams* case where the agency made such a determination after studying the situation and weighing the alternatives and did not offer a protracted cleanup period). See also, the Pa. Second Class Township Code, 53 P.S. § 30663, using the term "imminent peril" with respect to the denial of a supersedeas (stay) on appeal of a code violation.

See also City of Harrisburg Ordinance 4-1986, as amended, adding Section 8-101.3(f) to its Codified Ordinances to substitute a definition of an "Unsafe Building" for the definition in the BOCA BUILDING CODE, 1993, § 119:

> 119.1 Unsafe Building Defined:
> The term "unsafe building or structure" shall apply to buildings or structures or portions thereof, existing or hereafter erected, as follows:
> (1) Those whose interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
> (2) Those which, exclusive of the foundation, show thirty-three percent (33%) or more of damage or deterioration of the supporting member or members or fifty percent (50%) of damage or deterioration of the nonsupporting, enclosing or outside walls or covering.
> (3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.
> (4) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the City.
> (5) Those which have become or are so dilapidated, decayed, unsafe, or unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause injury, sickness or disease to those living therein or to the general public.
> (6) Those having inadequate light, air and sanitation facilities likely to cause injury, sickness or disease to those living therein or to the general public.
> (7) Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes or other means of evacuation.
> (8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
> (9) Those vacant buildings unguarded or open at a door or window shall be deemed a fire hazard and unsafe within the meaning of this Code.
> [(10) Those dwellings and premises existing in violation of the provisions of the City Building or Housing Codes or other relevant ordinances of the City and the statutes of the Commonwealth of Pennsylvania which, because of their condition or the manner in which the same are maintained, are so unsafe, unsanitary or dangerous as to constitute a danger to the health and safety of those living therein
> or to the general public.]
> NOTE, the bracketed language is already covered in the Act No. 90 definition of a Serious Code Violation.
> (Ord. 4-1986.)

And, see also the UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS™ published by the International Conference of Building Officials (now the International Codes Council); and other dangerous building ordinances available on the Internet. As authorized by the Uniform Construction Code, 35 P.S. § 7210.303(b) and 503(c), these alternate conditions for declaring an "unsafe building" could be added. They are also consistent with the statutory definition of "serious code violation" under Act No. 90.

The 2009 ICC Building Code, § 116.1 Unsafe Structures and Equipment (which has not been adopted in Pennsylvania as the Department of Labor and Industry chose not to adopt any of Chapter 1 of the Building Code and instead adopted its own administrative provisions in 34 Pa. Code Part 430):

> **SECTION 116 UNSAFE STRUCTURES AND EQUIPMENT**
>
> **116.1 Conditions.** Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of

> inadequate *means of egress* facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the *building official* deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

[11] The General Assembly has a project to revise and codify the Real Estate Tax Sale Law (RETSL) and the Municipal Claim and Tax Lien Act (MCTLA) (referred to as Law in Act No. 90); so clause (4) is added to the definition taken from Act No. 90 to refer to any successor legislation that is enacted. This helps to avoid a need for costly ordinance amendments if and when RETSL and/or MCTLA are overhauled; however, after 1971 even without clause (4), the reference should be to the Pennsylvania statutes as they exist at the time of application, not the date of enactment of Act No. 90. See the Pa. Statutory Construction Act, 1 Pa.C.S. § 1937 and § 1991 def. "statute."

[12] See Pa. Uniform Partnership Act, 15 Pa.C.S. § 8327; and Pa. Limited Partnership Act, 15 Pa.C.S. § 8533(b) regarding the unlimited personal liability of general partners. See also trustee's protection against personal liability under 15 Pa.C.S. § 9506(a)(2); however, compare Uniform Trust Code, 20 Pa.C.S. § 7790(b). These statutory provisions governing trustees are not likely, however, to limit liability as to fines and penalties under the Crime Code and would not likely even insulate a trustee from civil liability under existing housing codes and their authorizing statutes, because the trust controls the property. *See also Lohr Estate*, 3 D. & C.3d 307 (Pa. C.P. Somerset Cty.1977), regarding executors of estates.

[13] See e.g., the Municipal Claims and Tax Liens Act (MCTLA), 53 P.S. § 7251, purportedly applicable to all municipalities, which authorizes civil actions (formerly actions in assumpsit) against owners to recover the cost of nuisance abatement. There is some inconsistency in the authorization for civil action (assumpsit) between the Third Class City Code, 53 P.S. § 39601, and the Municipal Claims and Tax Lien Act, 53 P.S. § 7251, which, according to the Editor's Note in West Purdon's Pennsylvania Statutes, available online at http://government.westlaw.com/linkedslice/default.asp?RS=GVT1.0&VR=2.0&SP=pac-1000&Action=Welcome, is repealed as to third class cities. And, the Commonwealth Court in *McSwain v. City of Farrell*, 154 Pa.Cmwlth. 523, 624 A.2d 256 (1993), agreed (although its statement on the repeal might be considered dictum that is not binding on in future decisions by lower courts). The effect of that repeal is that third class cities that are not optional charter or home rule cities could not bring an civil action to recover costs of nuisance abatement because of the language of 53 P.S. § 39601. However, the Commonwealth Court held in the *McSwain* case that the City of Farrell, a home rule charter third class city, under the broad grant of authority in the statute authorizing the charter, had a right to bring a civil action (assumpsit). MCTLA, 53 P.S. § 39601, was last amended by the act of July 25, 1963 (P.L. 283, No.153), § 1, but the relevant section of the Municipal Claims and Tax Lien Act, 53 P.S. § 7251, was last amended by the act of March 9, 1970 (P.L. 162, No. 62), § 1. That act restated language that it applied to all cities:

> Section 1. Be it enacted, &c., That in addition to the remedies provided by law for the filing of liens for the collection of municipal claims, including but not limited to water rates, sewer rates and the removal of nuisances, all cities, boroughs, incorporated towns, [and first class] townships and bodies corporate and politic created as municipal authorities pursuant to law may proceed for the recovery and collection of all of the foregoing claims by action of assumpsit against the person or persons who were the owner or owners of the property at the time of the completion of the improvement, or at the time the water or sewer rates or the cost of the removal of nuisances first became payable notwithstanding the fact that there was a failure on the part of an) such city, borough, 'town, [or] township, or body politic and corporate created as a municipal authority pursuant to law, or its agents, to enter any such municipal claim as a lien against the property assessed for the improvement, or for the furnishing of water or sewer services and for the removal of nuisances and for the recovery of which the action of assumpsit was brought. Any such action in assumpsit shall be commenced either within six years after the completion of the improvement from which said claim arises or within six years after the water or sewer rates or the cost of abating a nuisance first became payable.

The Commonwealth Court in the *McSwain* case did not discuss or even reference the above 1970 amendment, probably because neither party to the case referenced it. Because the 1970 amendment, however, did not reference the Third Class City Code or the repeal MCTLA with respect to third class cities, the current view is that MCTLA was not reenacted to apply to third class cities. However, all third class cities under the Third Class City Code, can use 53 P.S. § 39133 and 53740, which authorize civil actions (formerly assumpsit actions) to enforce a city's municipal codes and public health ordinance.

Similar clear longstanding statutory authority exists under the First Class Township Code, 53 P.S. § 56519, which provides ". . . in addition to penalties provided by ordinances enacted hereunder, may institute appropriate actions or proceedings, at law or in equity, to prevent and restrain such unlawful construction, reconstruction, alteration, repairs, conversion, maintenance or use, and to restrain, correct, or abate such violation and to prevent the occupancy of said building, housing or structure. The ordinances enacted pursuant to this clause shall not be inconsistent with the provisions of any statute governing the same matter, but all regulations prescribed by such ordinances, which are additional or supplementary to the statute law and not inconsistent therewith, or enacted for the purpose of carrying into effect the provisions of the statute law, shall be valid and binding."

The Second Class Township Code, 53 P.S. § 56617, provides: "The board of supervisors may enact and enforce ordinances to govern and regulate the construction, alteration, repair, occupation, maintenance, sanitation, lighting, ventilation, water supply, toilet facilities, drainage, use and inspection of all buildings and housing constructed, erected, altered, designed or used for any use or occupancy and the sanitation and inspection of land. If any building and housing or structure is constructed, reconstructed, altered, repaired, converted or maintained or any building, housing or land is used in violation of any ordinance enacted under this section, the board of supervisors, in addition to penalties provided by the ordinances, may institute appropriate actions or proceedings at law or in equity to prevent and restrain the unlawful construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation and to prevent the use or occupancy of the building, housing or structure."

The Boroughs Code, 53 P.S. § 46202(24), provides: "Building, housing, property maintenance, plumbing and other regulations. To enact and enforce ordinances relating to buildings and housing, their construction, alteration, extension, repair and maintenance and all facilities and services in or about such buildings or housing, to require that, before any work of construction, alteration, extension, or repair of any building is begun, approval of the plans and specifications therefor be secured; to provide for the inspection of such work of construction, alteration, extension and repair, including the appointment of one or more building inspectors and/or housing inspectors; to prescribe limits wherein none but buildings of noncombustible material and fireproof roofs shall be erected, or substantially reconstructed, or moved thereinto; to provide for enforcement of such regulations by a reasonable fine, and by instituting appropriate actions or proceedings at law, or in equity, to effect the purposes of this provision and ordinances enacted thereunder. Any building, housing or property, or part thereof erected, altered, extended, reconstructed, removed or maintained, contrary to any of the provisions of any ordinance passed for any of the purposes specified in this clause is declared to be a public nuisance and abatable as such."

Similar authority is granted to the Commonwealth's first and second class cities. The First Class Cities (Philadelphia) – Philadelphia Code, Title 4 – Building Construction and Occupancy Code, Chapter 5 - Violations, Section A-503 – Prosecution authorizes legal proceedings to retrain, correct, remove or abate code violations. This was enacted pursuant to the broad general grant of power given to the City in its Home Rule Charter, Article I, Section 1-100. The Second Class Cities (Pittsburgh) – Pittsburgh Codified Ordinances, Title Ten-Building, § 1001.10(b), provides: "Bureau of Building Inspection of the City, in addition to prosecuting the violator in accordance with the foregoing provision, shall have authority to institute appropriate actions or proceedings at law or in equity to prevent and restrain such unlawful construction, reconstruction, alteration, repair, conversion, maintenance or use and to restrain, correct or abate such violation, and to prevent the occupancy of such of building or structure." This was enacted to the broad general grant of power given to the City in its Home Rule Charter, Article I, Section 1 100. See

also *McSwain v. City of Farrell, supra* note 131314, regarding the authority of home rule municipalities to institute civil actions to abate nuisances.

In *Commonwealth of Pennsylvania and Marlborough Township v. Edward Deloach and Marie Deloach (husband and wife)*, 714 A.2d 483 (Pa. Cmwlth. 1998), the Commonwealth Court held that landlord can be held liable for code violations of the landlord's tenant where the landlord has actual or constructive knowledge of such violations. This case was based in part upon the Restatement of Torts (Second) § 837 regarding premises liability. See also *Jones v. Three Rivers Management Corp*., 483 Pa. 75, 394 A.2d 546 (Pa., 1978).

In addition, in the *City of New Castle v. Uzamere*, 829 A.2d 763 (Pa. Cmwlth. 2003), the Commonwealth Court recognized the right of a third class city to recover by civil action (assumpsit) the cost of abatement of a nuisance under the Third Class City Code, 53 P.S. § 37403(16), which came from the act of May 27, 1919 (P.L. 310, No. 166); and the Act of June 27, 1913 (P.L. 568, No. 367), art. V, § 3, cl. 16, 17. The Commonwealth Court made no mention of the fact that the City of New Castle operated under Optional Third Class City Charter Law, which it had adopted in 1966. As a result, the court did not base its decision on the fact that the city had broader powers than those under the Third Class City Code. There have been no later amendments to clause 16 of 53 P.S. § 37403. The Third Class City Code even has other provisions authorizing the abatement of nuisances in 53 P.S. §§ 37140 thru 37143. The procedures in those sections, last amended in 1951, require the appointment of a board of viewers; so they are not as efficient as the other sections of the Third Class City Code. It would seem, therefore, third class cities have multiple sources of authority to recover costs of the abatement of nuisances by a civil action that could attach (impose a lien) on all of the assets of an owner. Senate Bill No. 874, Printer's No. 890, Session of 2011 (pending in the Senate), which is a recodification of the Third Class City Code, addresses the personal liability of the owner as follows:

> 28 Section 2711-A. Personal Liability of Owner.--
> 29 Notwithstanding the right of the city to utilize in rem
> 30 proceedings to pursue collection of the costs, fees and
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> ---
> 1 penalties in the statement of costs as a municipal claim, the
> 2 person who is the owner of the property at the time of a summary
> 3 abatement at which the notice required is given or, in the case
> 4 of an abatement pursuant to section 2704-A, the person who was
> 5 the owner of the property at the time notice of the existence of
> 6 the public nuisance was given shall be personally liable for the
> 7 amount of the assessment, including all interest, other charges
> 8 and, except as provided in section 2710-A(g), civil penalties.
>
> Section 2710-A(g) on page 350 of the Bill states:
> 18 (g) The department, in administrative review, or the appeals
> 19 board, on appeal, may reduce a proposed assessment by
> 20 eliminating the civil penalty portion of the statement of costs
> 21 if any of the following applies:
> 22 (1) The current owner did not own the property at the time
> 23 the notice required in section 2703-A was posted.
> 24 (2) The owner did not receive the notice to remove the
> 25 nuisance, did not have knowledge of the nuisance and could not,
> 26 with the exercise of reasonable diligence, have had knowledge of
> 27 the nuisance.

[14] The original version of Senate Bill No. 900, Printer's No. 1176, Session of 2010, which became Act No. 90 of 2010, contained a Subchapter C which dealt with the responsibilities of Mortgage Lenders. Since this did not become law as it was deleted from the Bill when it was reported out by the Senate Appropriations Committee as Senate Bill No. 900, Printer's No. 2028, municipalities are not required to follow the provisions in that Subchapter in actions authorized under law other than the Act, but it contains provisions worthy of consideration for including in this ordinance or in administrative procedures of municipalities to

ensure reasonable application of Codes to Mortgage Lenders consistent with Due Process. Because most Mortgage Lenders are likely to be responsive to municipalities demand that they secure any vacant properties for which they are considered a Mortgagee in Possession and therefore in control as required by the applicable Codes and would not likely try to rent the properties that are in serious violation of Codes, municipalities should attempt to secure voluntary compliance as they do with other owners or persons in control. As to at what point in foreclosure process (commencement, successful bidder, issuance of deed, recordation of deed, or other intermediate steps) does a Mortgage Lender becomes responsible for code violations on a property is yet to be addressed in a published decision of the Pennsylvania appellate courts.

[15] See note **Error! Bookmark not defined.~~Error! Bookmark not defined.~~~~13~~** referencing the statutory provisions imposing unlimited liability of all general partners of a general or limited partnership for the debts of a partnership whether or not they are in control of the partnership. To obtain a lien on a general partner's individual assets, however, under Pa.R.C.P. Rule 2128(a), 2133(c), and 2134, the general partner must be joined as an individual or a separate subsequent action brought against the general partner individually. As to limited partners that actively participate in the management of the properties on which their are code violations or a public or even private nuisance, they also can have liability along with the partnership. See Pennsylvania Limited Partnership Act, 15 Pa.C.S. § 8325. There is no intent expand the liability of passive shareholders, trust beneficiaries, or limited partners who do not participate in management and operation of the properties.

[16] The information in this sentence is necessary in order do an adequate search in the records of real property ownership outside of the municipality and often even inside the municipality.

[17] Generally, an entity that merely owns real property in Pennsylvania does not require filing with the Corporation Bureau. However, there is authority for requiring such registration where the ownership is in operation of a real estate business. *Compare American Housing Trust, III v. Jones*, 548 Pa. 311, 696 A.2d 1181 (1997), on remand 1999 WL 34800858 (Trial Order) (Pa. Com. Pl. Del. Cty. Nov. 4, 1999) (No. 84-13690). with *WAMCO XXV, Ltd. v. DeSouza*, 51 Pa. D. & C.4th 328 (Phila. , Pa. C.P. 2001), which held the Supreme Court's statements in the *American Housing Trust* case to the effect that regularly conducted activities in Pennsylvania can subject to a lender to the qualification requirements is merely dictum. See also Tarantino v. City of Hornell, 615 F.Supp.2d 102 (W.D. N.Y., 2009), upholding a local ordinance requiring a local resident to be named as agent. See also information regarding the lawsuit challenging the City of Pittsburgh's Rental Registration Ordinance, http://dornish.net/acre-goes-to-court-on-first-rental-registration-ordinance-and-prepares-to-fight-more. The Pittsburgh Rental Ordinance registration deadline has been extended indefinitely by the Allegheny Court of Common Pleas by a consent order signed by the parties to the lawsuit while court resolves the case. http://www.post-gazette.com/pg/09331/1016676-53.stm. *Apt. Assn. of Metropolitan Pgh. v. City of Pgh.*, GD-09-003986 (Allegheny Cty. C.P. complaint filed March 2, 2009 and Consent Order entered November 6, 2009.

[18] In order to track down responsible parties and hold them accountable under Section 4.b in a lawsuit for personal liability, their home address or place of business is necessary for proper service of process. See Pa.R.C.P. 402, 403, and 404.

[19] Many building permit applications are signed by a contractor or agent, not the record owner, except where a zoning application is concerned. This procedure would have to be changed or at least a disclosure under this provision would have to be signed by the Owner.

[20] It may be prudent to require the Owner to list all properties for which fines or other penalties or a judgment to abate or correct were imposed by a magisterial district judge or municipal court, or a judgment at law or in equity was imposed by a court of common pleas, but give the Owner the opportunity to provide evidence that the Owner substantial steps to correct the violation within six months following notification of the imposition of fines and penalties or other judgment. This type of disclosure would be consistent with the imposition in section 6131(a)(ii) of the Act on the Owner to provide information on any supersedeas or stay and the proof of compliance provision in section 6131(b) of the Act and avoids the Owner making a judgment call as to disclosure.

[21] In requiring the disclosure of properties with adjudicated serious code violations, a false statement (omissions that are required to be answered make the statement false or misleading) is misdemeanor of the second degree, an extraditable offense as are all misdemeanors, and is subject to imprisonment of up to 2 years and a fine of at least $1,000. See 18 Pa.C.S. § 4904(a) and (d) (elements and penalty of offense) and 18 Pa.C.S. § 106(b)(7) (maximum prison time for misdemeanor of second degree).

[22] Cities of the First (Philadelphia) and Second (Pittsburgh) Class or even Third Class may choose to authorize the head of the department in charge of approving or processing a municipal permit to change the disclosure form from time-to-time without approval of the governing body so long as it complies with this ordinance and applicable law as they might do now for the municipal permit application forms. For a form of this significance it is recommended that the municipal solicitor or a city staff attorney approve the form for legality. An example of such a disclosure form is includes as Appendix 1 to this Model Ordinance. In order avoid having to change the ordinance each the form is modified for administrative efficiencies, it is recommended the form be approved by a resolution of the governing body of the municipality unless municipal permit forms are routinely approved by the departments reviewing applications.

[23] The Act, 53 Pa.C.S. § 6131(a)(1) provides that the municipal *may* deny a municipal permit for the reasons stated in the Act in order to give municipalities the maximum flexibility. Municipalities should either uniformly deny municipal permits where authorized by the Act or have clear sufficient justification for not denying a permit so as not have an abuse of discretion. The reason for the flexibility in the Act is that the action or inaction of another municipality should not bind a municipality but give the municipal permit denial authority to other jurisdictions to prevent code violators from impacting their communities.

[24] Where a property has multiple significant code violations involving major systems such as plumbing and electrical, under this provision which is taken directly from the Act, it may not be permissible to deny a permit to fix just the plumbing. However, the granting of this component permit does not provide authorization to occupy a building that does not meet codes. Furthermore, the owner will be subject to enforcement action as to the other unabated code violations.

[25] See Pa.R.C.P. 403.

[26] See Pa.R.C.P. 402.

[27] For due process and proper service the Internet must also be used to search for addresses of defendants. See Pa.R.C.P. The comments of the Advisory Committee on the Pennsylvania Rules of Civil Procedure under Rule 430 which cite the case law on the requirement for a "good faith effort" to locate the defendant before service by publication is permitted give examples of what items should be searched. Courts will open judgment where there was not in fact a good faith effort. In addition to those items listed in the Advisory Committee's Comments, the use of the Internet and published sources such the Social Security Index, obituaries, for pay databases such as Knowx.com, assessment records will help to meet the due process standards. See also *Yoder v. Colonial National Mortgage*, 920 N.E.2d 798 (Ind. Ct. App. 2010); *Gaeth v. Deacon*, 964 A. 2d 621 (Maine 2009); and Carole Levitt and Mark Rosch, *Is There a "Duty to Google?* from 2 INTERNET FACT FINDING FOR LAWYERS,(May-June, 2007), reprinted in 24 THE PRACTICAL REAL ESTATE LAWYER 4 (ALI-ABA Sept. 2008), citing the following cases: *Munster v. Groce*, 829 N.E.2d 52 (Ind. App. 2005); *Dubois v. Butler*, 901 So. 2d 1029 (Fla. App. 2005); and *Weatherly v. Optimum Asset Management*, 928 So. 2d 118 (La. Appl. 2005).

Caution should be exercised in using private sources rather than court docket systems and records and official tax and municipal charges records, as to currency and accuracy, particularly as to whether cases have been appealed. The private services may be best used to identify possible items that could form the basis of a denial which then should be verified by using official sources, including direct contact with the office maintaining the records.

[28] It has been suggested that this search be mandatory. While uniformity in application is desirable, the resources of a municipality could be taxed if a search is required in all cases. If a municipality becomes aware of items justifying a denial from news reports or private complaint, and verifies this with official sources such as docket systems, no statewide search should be necessary for a denial. If the disclosure form referenced in Section 5.a.(2) is found to be false, this should be grounds to revoke a permit. *Philadelphia v. Wyszynski*, 381 Pa. 153, 112 A.2d 327 (1955); *Woodward Twp. v. Zerbe*, 6 A.3d 651 (Pa. Cmwlth. 2010); *Adams Outdoor Adver., Ltd. v. DOT*, 860 A.2d 600 (Pa. Cmwlth. 2004) (no laches found to bar revocation), petition for allowance of appeal denied, 585 Pa. 690, 887 A.2d 1242 (2005).; Eltoron, Inc. v. Zoning Hearing Bd., 729 A.2d 149 (Pa. Cmwlth. 1999) (noted citing an earlier case that revocation can even be sustained based upon a mistake of fact).

[29] Joint zoning hearing boards are permitted under the Municipalities Planning Code, 53 P.S. § 10904. If a municipality is using such board, both municipalities would have to coordinate their ordinances and procedures for a zoning permit denial under the Act.

[30] Dispositions of appeals to court from the City of Philadelphia Zoning Board of Adjustment is governed by what was formerly called the Local Agency Law, now chapters in the Pennsylvania Consolidated Statutes, 2 Pa.C.S. Chs. 5 Subch. B (relating to practice and procedure of local agencies) and 7 Subch. B (relating to judicial review of local agency action). *Manayunk Neighborhood Council Inc. v. City of Philadelphia Zoning Bd. of Adjustment* (Pa. Cmwlth. Ct., 2010). Similarly, the disposition of appeals to court from the City of Pittsburgh Zoning Board of Adjustment is governed by the Local Agency Law. *Lamar Advantage Gp Co. v. Zoning Hearing Bd. of Adjustment of The City of Pittsburgh*, 997 A.2d 423 (Pa. Cmwlth. Ct., 2010); Klein v. Council of City of Pittsburgh, 643 A.2d 1107, 164 Pa.Cmwlth. 521 (Pa. Cmwlth., 1994). Appeals to court from the zoning hearing boards, including joint zoning hearing boards, of all other municipalities are governed by the Municipalities Planning Code, 53 P.S. § 10107 Definition of "Municipality" and 53 P.S. Article X-A.

[31] The purpose of requiring the Codes Officials and Zoning Boards to conduct their review of possible denials under the Act and this Ordinance is avoid unnecessary expenditure of costs on the owner and staff time and costs of the municipality even if the plans and other conditions of the municipal permit were met. Municipalities contracting out the code enforcement services as authorized by the Uniform Construction Code, may find it too expensive to utilize those third party services to conduct any search. To be consistent with the Uniform Construction Code, any officer granted authority to denied municipal permits under that Code have to be certified code officers; so the actual denial because of fiscal constraints may have to come from the third party code enforcement service. The review prior to a plan review or construction inspection is consistent with the Uniform Construction Code, 35 P.S. § 7210.502(a)(1) which authorize a Building Code Official to withhold a permit until such time as the applicant provides proof that other municipal permit requirements have been satisfied.

[32] To give effect to the opportunity for the proof of compliance provision under the Act, the deemed decision provision under Municipalities Planning Code, 53 P.S. § 10908(1.2) and (9), the decision on a municipal permit would have to be held in abeyance and not deemed approved until a period after the 45 days has run.

[33] The bracketed language is not required for due process. *Flanders v. Board City Borough Council*, 986 A.2d 964 (Pa. Cmwlth. 2009), specifically held that there is no due process requirement that a code enforcement notice give notice of the right to appeal. However, see Section 107.2 Paragraph 5 of the 2009 International Property Maintenance Code requiring notice of the right to appeal. The better practice would be to include such a notice as is done in many other administrative appeals situations, including tax cases. See State Taxpayers Bill of Rights, 72 P.S. § 3310-202; and Local Taxpayer Bill of Rights, 72 P.S. § 8423(a)(2).

Note, there is no stay or supersedeas where a code enforcement order is to vacate an unsafe building given under the Pa. Department of Labor and Industry's Regulations implementing the Uniform Construction Code, 34 Pa. Code § 403.84(b), even though the property owner is given 30 days under 34 Pa. Code

§ 403.83(b), in which to file an answer as to why the property should not be ordered vacated. 34 Pa. Code § 403.122(c). *Compare* 34 Pa. Code § 403.82(1), which applies to other code enforcement notice where the Department requires the notice to specify the time but leaves it to the code enforcement officer's discretion as it should.

The Local Agency Law,, now chapters in the Pennsylvania Consolidated Statutes, 2 Pa.C.S. Chs. 5 Subch. B (relating to practice and procedure of local agencies) and 7 Subch. B (relating to judicial review of local agency action), implements Article V, Section 9 (adopted April 23, 1968) of the Pennsylvania Constitution which gives a right of appeal from local government agency to a court of record which is the court of common pleas. A "local government agency" is defined in 2 Pa.C.S. § 101 to include officers and agents of a governmental unit. Based on those provisions, the appeal would go directly to the court of common pleas. It might be possible for somebody to bring an action of mandamus to require the appointment of a board of appeals, at least for future cases. Even before the above Section 9 was adopted, the Constitution of 1874, art. V, § 14 provided: "In all cases of summary conviction in this Commonwealth, or of judgment in suit for a penalty before a magistrate, or court not of record, either party may appeal to such court of record as may be prescribed by law, upon allowance of the appellate court or judge thereof upon cause shown." See *Rosenblum v. City of Sharon*, 14 Pa. D. & C.2d 188 (Pa. C.P. Mercer Cty. 1957). Also, there are important procedural reasons for having a board of appeals. If there is a full and complete record, the court will decide on the law based upon the record and not make independent findings of fact.

The Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10616.1(c)(5), also requires a notice of a right to appeal. Therefore, the Commonwealth Court case of *Flanders v. Board City Borough Council*, 986 A.2d 964 (Pa. Cmwlth. 2009), referenced in Note 333337 would not apply to cases arising under the MPC.

[34] The Act, 53 Pa.C.S. § 6131(b)(1) provides that the municipal *may* withhold a municipal permit pending the receipt of proof of compliance in order to give municipalities the maximum flexibility in administering the Act; however, the better practice for the denial to be meaningful is to withhold the permit until proof of compliance is received. Revocation of permits creates hardships and wastes both municipal and owner resources; it is reasonable for the municipality to exercise its discretion by uniformly requiring the proof of compliance before issuing a municipal permit. *Compare Summit School, Inc. v. Com., Dept. of Ed.*, 402 A.2d 1142, 43 Pa.Cmwlth. 623 (Pa. Cmwlth., 1979); and *Baker v. Scranton Aluminum Mfg. Co.*, 364 A.2d 377, 242 Pa.Super. 488 (Pa. Super., 1976). See also note 282832 regarding revocation of municipal permits.

[35] This deemed compliance is only for the purpose of removing the related code violation as a grounds for a denial of a permit. The owner still has to bring the real property into compliance in accordance with the applicable codes.

[36] Compare Pa.R.Crim.P. 460(C) requiring the Clerk of Court to notify the issuing authority (minor judiciary) of the filing of the notice of appeal. To carry the analogy further, it would require each municipality or tax collector receiving a request for proof of compliance to notify the municipality in which the municipal permit is sought. This is too burdensome, and until there are abuses, the procedures suggested in this Model Ordinance are recommended for adoption.

[37] A municipality, of course, can only control what happens within its own territory. If in the unlikely event this provision of the Act to extend terms to a devisee or heir was not complied with by another municipality, that noncompliance could be grounds for appeals in both in the municipality in which the code violation occurred and in the municipality seeking to deny a permit. For that reason Subsection 5.b(1)(h)(v) has been added to this Ordinance.

[38] Section 9 (relating to delegation to municipal officers) was deleted as unnecessary in view of the specific authority granted under the Act and this Ordinance to the Codes Official and Zoning Boards of Adjustment and Zoning Hearing Boards. It is, however, better for the effective enforcement of municipal codes that the Codes Official and perhaps other subordinate staff be specifically designated in an Ordinance as law

enforcement officers with the authority to enforce municipal codes within the meaning of Pa.R.Crim.P. Rules 103 and 402 *et seq.* even though that specific designation is not required. *Commonwealth v. Joki*, 330 Pa.Super. 406, 479 A.2d 616 (1984).

[39] A municipality has to decide whether applicable statutory time period for an ordinance to take effect is sufficient for the municipality to set up its procedures and train its staff to implement this Ordinance. Because the municipality may have been studying the Act which took effect on April 25, 2011, and drafts of this Model Ordinance, it may be in a position to allow the Ordinance to take effect in the minimum time allowed under its home rule charter or applicable code (Third Class City Code, First Class Township Code, Second Class Township Code, or Borough Code).

[40] This entire definition of Blighted Property was ultimately deleted from the Bill when it was reported out by the House Urban Affairs Committee as Senate Bill No. 900, Printer's No. 2239, and not enacted as part of Act No. 90. This was done because the term "Blighted Property" was no longer used by any provision in the legislation.

[41] This clause (1) was amended on third consideration by the Senate and printed as Senate Bill No. 900, Printer's No. 2132 to read as follows after the words "in accordance":

> with the local housing, building, plumbing, fire and related STATE LAWS AND RELATED MUNICIPAL codes and ordinances, including nuisance and dangerous building ordinances.

This was done in order to make the language consistent with other changes in definitions in the legislation.

[42] The language "otherwise dangerous to the safety of persons or property" was deleted upon second consideration by the Senate and then printed as Senate Bill No. 900, Printer's No. 2112.

[43] This clause (5) was deleted from the Bill's definition of Blighted Property when it was reported out by the Senate Appropriations Committee as Senate Bill No. 900, Printer's No. 2028; so including that in the definition of "Serious Violation" is not recommended as it may be outside the scope of what a court deems authorized under the Act. A property without such basic systems that remains unoccupied and sealed may not be considered an "*imminent* threat to the health and safety of a dwelling occupant, occupants in surrounding structures or a passersby" as required by the Act to be a "Serious Violation."

[44] Under section 6131(a)(i) of the Act any unpaid and unappealed delinquency is a separate basis for a denial of a Municipal Permit, but not part of the definition of a "Serious Violation"; so it may not be used as a basis for an attachment under the Act, but under Municipal Claims and Tax Liens Act, 53 P.S. § 7251, a civil action (called "assumpsit" in statute) for personal liability can be brought against the owner. See, however, the discussion in Note 13 regarding third class cities.

[45] This is not completely consistent with the Municipal Code and Ordinance Compliance Act, the act of December 20, 2000 (P.L. 724, No. 99), 68 P.S. § 1081, effective February 20, 2001, which requires the purchaser of a building with known code violations to abate the code violations or demolish a building within a year (or 18 months if the violations rise to the level of a public nuisance), unless the deadline has been extended by agreement with the municipality, or the purchaser faces fines of up to $10,000.00.