

## YOE BOROUGH ORDINANCE

### ORDINANCE #2017-1

**AN ORDINANCE ADOPTING THE FIRE INSURANCE ESCROW ACT (ACT OF 1994) TO ALLOW THE BOROUGH TO INVOKE THE PROVISIONS, RIGHTS AND DUTIES FOUND IN THAT ACT, WHICH REQUIRE THE TRANSFER A PORTION OF THE INSURANCE PROCEEDS TO A DESIGNATED OFFICER OF THE BOROUGH TO BE HELD AS SECURITY AGAINST THE TOTAL COST OF REMOVING, REPAIRING, OR SECURING THE DAMAGED BUILDING; SETTLE ENCUMBRANCES SET AGAINST THE INSURED PROPERTY; PROVIDE FOR THE PAYMENT OF FEES; PROVIDE PENALTIES FOR VIOLATION; AND THAT SET FORTH PROCEDURES AND REQUIREMENTS PERTAINING TO SUCH INSURANCE PROCEEDS**

**WHEREAS**, the Borough of Yoe (hereinafter “Borough”), in accordance with the provisions of the Pennsylvania Borough Code (Act 37 of 2014), specifically Title 8, §3301.1(b)4(iv) and §3106, is authorized, and required, to enact legislation regulating conduct of an entity within the borough by enforcing a statute designed to abate or remove nuisances detrimental to the public health, and

**WHEREAS**, Commonwealth of Pennsylvania has enacted the Fire Insurance Escrow Act (enacted Act 98 of 1992 and Act 93 of 1994) which amended the Insurance Company Law of 1921 to provide procedures for the payment of certain fire loss claims, and which requires the municipalities of this Commonwealth to adopt the provisions of this act by ordinance, and

**WHEREAS**, the specific purpose of the Fire Insurance Escrow Act is to deter the commission of arson and related crimes, discourage the abandonment of property and prevent blight and deterioration in the municipalities of this Commonwealth, and

**WHEREAS**, the Borough Council for the Borough has deemed it necessary and prudent to adopt such an ordinance and desires to adopt an this Ordinance pursuant to Section 508 of the Insurance Company Law of 1921 to provide for the payment of proceeds from certain fire loss claims to the Borough and allowing the Borough to avail itself of any and all other remedies provided by the Fire Insurance Escrow Act in its entirety.

**NOW THEREFORE**, be it ENACTED and ORDAINED, by the Borough of Yoe, York County, Pennsylvania as follows:

#### Part 4

#### FIRE INSURANCE

##### A. FIRE LOSSES, CLAIMS AND INSURANCE PROCEEDS ESCROW

###### §7-401. Purpose

The purpose and intent of this ordinance is to comply with the requirements set forth in the Fire Insurance Escrow Act (Act 93 of 1994) and any other duly enacted legislation (including, but not limited to, the Insurance Company Act of 1921 and Act 98 of 1992) that the Fire Insurance Escrow Act is promulgated thereon (hereinafter collectively referred to

hereinafter as the “FIEA”) as they relate to the ability of the Borough of Yoe (both entity and geographic location hereinafter referred to as the “Borough”) to avail itself of the provisions of that Act where fire damage to any building(s), structure(s) and any appurtenance(s) thereto located within the Borough has occurred, which, at the time of such damage, such building(s), structure(s) and appurtenance(s) were insured by an insurance company, association or exchange doing business in the Commonwealth of Pennsylvania (hereinafter referred to as the “Commonwealth”).

#### **§7-402. Payment of Fire Loss Claims**

No insurance company, association or exchange (hereinafter “Insuring Agent”) doing business in the Commonwealth shall pay a claim of a named insured for fire damage to any property, as provided for in §7-401 of this part, which property is located within the Borough and where the amount recoverable for the fire loss to that property, under any and all related insurance policies, exceeds Seven-Thousand, Five-Hundred (\$7,500.00) Dollars, unless the Insuring Agent is furnished by the Borough Treasurer with a certificate (and bill, if applicable) pursuant to §638(b) of the FIEA, and subject to the provisions of §638 *et seq.* of the FIEA, the previous laws amended by the FIEA, and the provisions of this Ordinance.

#### **§7-403. Designated Officer**

The Borough Treasurer is hereby appointed as the designated officer authorized to carry out all responsibilities and duties stated in the FIEA.

#### **§7-404. Duties of the Designated Officer**

##### **1. Certificate Required**

- A. In the event the Borough Treasurer receives a written request from a named insured, or their agent, pursuant to §638(b)(1) of the FIEA, the Borough Treasurer shall obtain a copy of all fire insurance policies covering the property (or properties) reasonably believed to have sustained fire loss damage in excess of seven thousand, five hundred (\$7,500.00) dollars.
- B. Upon receipt of the request stated in paragraph (1) of this subsection, the Borough Treasurer shall, within fourteen (14) working days, provide a written certificate (i.e. statement or invoice, respectively) detailing the existence of any delinquent taxes, assessments, penalties, and any charges against the property of the insured (as provided for in §638(b) of the FIEA) from any municipality.

##### **2. Receipt of Insurance Proceeds**

- A. Upon receipt of any proceeds from any insurance policy for fire damage to any property described in §7-401 of this part, the Borough Treasurer shall:
  - (1) Receive those funds, under the auspices of the FIEA, and those funds shall be placed in an escrow account held for, or established by, the Borough to settle any outstanding balance for any debt on the property owed to the Borough and described hereinafter and also to act as security against the total cost of removing, repairing or securing the affected property incurred by the Borough.

- (2) Notify the named insured and certify that the proceeds have been received by the Borough and inform the named insured of the procedures that will be followed under the FIEA.
- (3) The Borough Treasurer shall credit any amount received against any outstanding balance on any property described herein, pursuant to §638(b)(2)(ii) of the FIEA, and transfer that same amount to the Borough to satisfy any such outstanding balance.
- (4) Where, pursuant to §638(b)(2)(i) of the FIEA, the Borough Treasurer issues a certificate indicating that there are not delinquent taxes, assessments, penalties, or user charges against real property, the Insuring Agent shall pay the claim of the named insured, provided however, that if the loss agreed upon by the named insured and the Insuring Agent equals or exceeds sixty (60%) percent of the aggregate limits of liability on all fire policies covering any building, structure, or any appurtenance thereto, the following procedures must be followed:
  - (a) The Insuring Agent shall transfer from the insurance proceeds to the Borough Treasurer the aggregate of \$2,000.00 for each \$15,000.00 for each claim, and for each fraction of that amount of a claim, to be applied such that if the claim is \$15,000.00 or less, the amount transferred to the Borough shall be \$2,000.00; or
  - (b) If the named insured has submitted a contractor's signed estimate of the cost of removing, repairing or securing the building(s), structure(s) or appurtenances thereto in compliance with all other Borough Ordinances, Uniform Construction Code and the International Property Maintenance Code, and that cost estimate is less than the formula set forth in sub-section (3)(i) of this section, then the Insuring Agent shall transfer to the Borough from the insurance proceeds the amount specified in that estimate. Any amount previously transferred to the Borough in excess of that estimate shall be returned to the named insured.
  - (c) The transfer of proceeds shall be on pro rata basis by all companies, associations or exchanges insuring the building(s), structure(s) or appurtenances thereto.
  - (d) After the transfer, the named insured shall submit a contractor's signed estimate within sixty days (60) of the date the certificate required under subsection A of costs of removing, repairing or securing the building of other structure, and the Borough Treasurer shall return the amount of the funds transferred to the Borough in excess of the estimate to the insured, if the Borough has not commenced to remove, repair or secure the building or other structure.
- (5) Upon receipt of proceeds under this section, the Municipality shall do the following:
  - (a) The designated officer shall place the proceeds in a separate fund to be used solely as security against the total costs of removing, repairing, or securing the building or structure which are incurred by the Municipality. Such costs shall

include, all reasonable and customary engineering , legal or administrative costs incurred by the municipality in connection with such removal, repair or securing of the building or any proceedings related thereto; and

- (b) It is the obligation of the Insuring Agent when transferring the proceeds to provide the Municipality with the name and address of the named insured. Upon receipt of the transferred funds and the name and address of the named insured, certify that the proceeds have been received by the Municipality and notify the named insured that the procedures under this subsection shall be followed; and
  - (c) When repairs, removal or securing of the building or other structure have been completed in accordance with all applicable regulations and orders of the Municipality and the required proof of such completion received by the designated officer, and if the Municipality has not incurred any costs for repairs, removal or securing of the building or other structure, the costs shall be paid from the fund and if excess funds remain, the Municipality shall transfer the remaining funds to the named insured; and
  - (d) To the extent that interest is earned on proceeds held by the Borough pursuant to this Section, and not returned to the named insured such interest shall belong to the Borough. To the extent that proceeds are returned to the named insured, interest earned on such proceeds shall be distributed to the named insured at the time that the proceeds are returned.
- (6) Nothing in this section shall be construed to limit the ability of the Borough to recover any deficiency. Furthermore, nothing in this subsection shall be construed to prohibit the Borough and the named insured from entering into an agreement that permits the transfer of funds to the named insured if some other reasonable disposition of the damaged property has been negotiated.

#### **§7-405. Enabling the Imposition of Fees**

The Council of the Borough may, by Resolution, adopt procedures and regulations to implement this Ordinance under the FIEA and fix reasonable fees to be charged for municipal activities or services provided to effectuate the intent of this Ordinance, including, but not limited to, the issuance of certificates and bills, the performance of inspections and the opening separate fund accounts.

#### **§7-406. Penalty for Non-Compliance**

Any owner of property, any named insured or any Insuring Agent who violates the provisions of this Ordinance, or fails to comply with any of the terms set forth herein, shall, upon conviction, be subject to a penalty of up to \$1,000.00, but no less than \$300.00, plus court costs and attorneys fees', per violation. Each day in which an offense shall continue shall be deemed a separate offense.

#### **§7-407. Statutory Interpretation**

##### **1. Construction**

This Ordinance shall be liberally construed, in accordance with §638(k) of the FIEA, to accomplish its purpose in deterring the commission of arson and related crimes,

discouraging the abandonment of property and preventing blight and deterioration in the Borough.

**2. Severability**

The provisions of this Ordinance are severable. Any sentence, clause or section of this Ordinance found to be unconstitutional, illegal or invalid by the courts of this Commonwealth shall not affect the validity of any of the remaining provisions of this Ordinance.

**3. Repeal of Conflicting Ordinances or Parts Thereof**

Any ordinance, or any part of an ordinance, found in the Code of Ordinances for the Borough of Yoe in effect as of the date of passage of this Ordinance that conflict with any provision of this Ordinance are hereby repealed insofar as it may affect any part of this Ordinance.

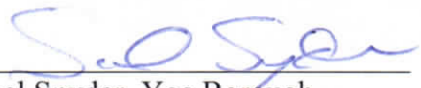
**4. Effective Date**

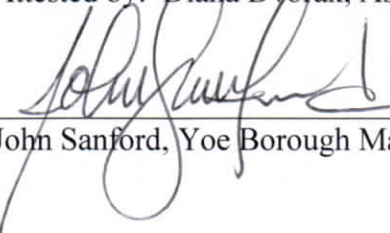
This Ordinance shall become effective immediately.

**BE IT HEREBY ENACTED AND ORDAINED** this 7<sup>th</sup> day of March, 2017, by the Borough Council of the Borough of Yoe, York County, Pennsylvania.

**YOE BOROUGH COUNCIL**

  
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Attested by: Diana Dvorak, Assistant Secretary

  
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Samuel Snyder, Yoe Borough  
Council President

  
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John Sanford, Yoe Borough Mayor