

ORDINANCE NO. 8-17 OF 2009

AN ORDINANCE OF SOUTH BUFFALO TOWNSHIP, ARMSTRONG COUNTY, PENNSYLVANIA, DELEGATING THE ENFORCEMENT OF TOWNSHIP ORDINANCES TO THE SOUTH BUFFALO TOWNSHIP POLICE DEPARTMENT AND ESTABLISHING GUIDELINES FOR THE SAID POLICE DEPARTMENT MAKING WARRANTLESS ARREST UNDER SECTION 8902 OF TITLE 42.

WHEREAS, South Buffalo Township has enacted various ordinances the enforcement of which must be delegated to a designated township department pursuant to the applicable provisions of the Second Class Township Code; and

WHEREAS, pursuant to 42 Pa.C.S. §8902, guidelines must be established in order for the South Buffalo Township Police Department to make warrantless arrests.

NOW THEREFORE IT IS ORDAINED AND ENACTED AS FOLLOWS:

SECTION 1. PURPOSE. The purpose of this Ordinance is to delegate the enforcement of various township ordinances to the South Buffalo Township Police Department pursuant to the applicable Act of the General Assembly and to further establish guidelines for warrantless arrests pursuant to 42 Pa.C.S. §8902.

SECTION 2. DELEGATION OF ENFORCEMENT. Any and all Ordinances of South Buffalo Township that regulate building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water, air or noise pollution, the authority to enforce these types of ordinances is delegated and given to the South Buffalo Township Police Department.

### SECTION 3. GUIDELINES FOR WARRENTLESS ARREST.

For any of the following offenses, a police officer shall, upon view, have the right of arrest without warrant upon probable cause when there is ongoing conduct that imperils the personal security of any person or endangers public or private property:

Under Title 18 (relating to crimes and offenses) when such offense constitutes a summary offense:

18 Pa.C.S. § 5503 (relating to disorderly conduct).

18 Pa.C.S. § 5505 (relating to public drunkenness).

18 Pa.C.S. § 5507 (relating to obstructing highways and other public passages).

18 Pa.C.S. § 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages).

The right of arrest without warrant under the above section 42 Pa. C.S. §8902 shall be permitted by the South Buffalo Township Police Department pursuant to the guidelines promulgated as follows:

The officer shall ensure that the following requirements contained in the statute are satisfied: (1)The officer had probable cause to believe that one of the four listed offenses is involved (2) That the defendant's conduct is ongoing; (3)That the conduct constituting the offense is upon the officer's view; and (4)the conduct imperils the personal security of any person or endangers public or private property.

After making a warrantless arrest pursuant to Section 8902 of Title 42 of the Pennsylvania Consolidated Statutes, the officer shall follow Rule 441 procedure following arrest without warrant as set forth in the Pennsylvania Rules of Criminal Procedure.

### Section 4. SEVERABILITY.

The provisions of this Ordinance are severable, and if any section, sentence, clause or phrase shall be held by a court of competent jurisdiction to be illegal, invalid or unconstitutional, the remaining portions of this Ordinance shall not be affected or impaired thereby.

Section 5. REPEALER.

Any Ordinance or any part of any Ordinance conflicting with the provisions of this Ordinance are hereby repealed

Section 6. EFFECTIVE DATE. The provisions of this Ordinance shall be effective immediately.

ORDAINED AND ENACTED this 17<sup>th</sup> day of August, 2009 at a regular meeting of the South Buffalo Township Supervisors.

SOUTH BUFFALO TOWNSHIP

ATTEST:

Michelle Bustensky

Secretary

(SEAL)

Greg Vaclik

Don Bustensky

Thomas Bowski

## MEMORANDUM

To: South Buffalo Township Supervisors  
From: James A. Favero, Solicitor  
Re: Ordinance Enforcement  
Dated: July 22, 2009

### Discussion:

During a recent meeting with the board of supervisors the Chief of Police indicated that he felt an ordinance needed to be adopted to direct enforcement of township ordinances. This request raises the issue of who has the authority to undertake the enforcement of various township ordinances.

A municipal government is a creature of the legislature. Municipal governments have no sovereignty and have no existence or powers except those given to it by the legislature. In the case of South Buffalo Township, it is governed by the Second Class Township Code (53 P.S. § 65101-68701), as well as a number of other municipal codes that have been enacted by the legislature.

There are three basic types of ordinances and each one is enforced differently. Ordinances enacted under the authority of any municipal code other than the Second Class Township Code and ordinances enacted under Section 1601(c.1)(2) of the Second Class Township Code must be enforced through summary criminal proceedings. Ordinances enacted under Section 1601(c.1)(1) of the Second Class Township Code and subdivision ordinances are enforced in civil proceedings. Any ordinance enacted under the provisions of the Municipalities Planning Code (MPC) must be enforced in accordance with the provisions of the MPC.

Section 1601(c.1)(1) 53 P.S. §66601(c.1)(1) states as follows:

(c.1) An ordinance enacted by the board of supervisors pursuant to this act shall prescribe the fines and penalties which may be imposed for its violation and shall, unless otherwise specified in another statute, designate the method of its enforcement in accordance with the following:

(1) CIVIL ENFORCEMENT.-- Except as provided in paragraph (2), when the penalty imposed for the violation of an ordinance enacted pursuant to the provisions of this act is not voluntarily paid to the township, the township shall initiate a civil enforcement proceeding before a district justice. The civil enforcement proceeding shall be initiated by complaint or by such other means as may be provided by the Pennsylvania Rules of Civil Procedure. An ordinance which is to be enforced through a civil enforcement proceeding may prescribe civil penalties not to exceed six hundred dollars (\$600.00) per violation. In addition to or in lieu of civil actions before a district justice, townships may enforce ordinances in equity. In any case where a penalty for a violation of a township ordinance has not been timely paid and the person upon whom the penalty was imposed is found to have been liable therefor in civil proceedings, the violator shall be liable for the penalty imposed, including additional daily penalties for continuing violations, plus court costs and reasonable attorney fees incurred by the township in the enforcement proceedings. A township shall be exempt from the payment of costs in any civil case brought to enforce an ordinance in accordance with this paragraph.

Section 1601(c.1)(2) 53 P.S. §66601(c.1)(2) states as follows:

(2) ENFORCEMENT AS SUMMARY OFFENSES.-- For an ordinance regulating building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water, air or noise pollution, the board of supervisors shall provide that its enforcement shall be by action brought before a district justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. The municipal solicitor may assume charge of the prosecution without the consent of the District Attorney as required under Pa.R.Crim.P. No. 83(c) (relating to trial in summary cases). The board of supervisors may prescribe criminal fines not to exceed one thousand dollars (\$1,000.00) per violation and may prescribe imprisonment to the extent allowed by law for the punishment of summary offenses.

The Second Class Township Code also contains language concerning any ordinances that were enacted by a township

prior to the enactment of the amendments to the Second Class Township Code that pertain to ordinances. That section (Section 1601(c.1)(3) 53 P.S. §66601(c.1)(3) states as follows:

(3) EXISTING ORDINANCES.-- With regard to ordinances enacted prior to May 7, 1996, those regulating building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water, air or noise pollution shall be deemed automatically amended so that they shall be enforced by an action brought before a district justice in the same manner provided for the enforcement of summary offenses in accordance with paragraph (2). All other ordinances enacted prior to May 7, 1996, shall be deemed automatically amended so that they shall be enforced through a civil enforcement proceeding in accordance with paragraph (1).

These provisions of the Second Class Township Code set forth the fines and the procedure for enforcement of the various ordinances enacted by Second Class Townships. Now the question becomes who or what entity is to do the actual enforcement.

Section 1905 of the Second Class Township Code (53 P.S. §66905) sets forth the powers of township police. This section states:

Each township police officer has those powers and abilities as are granted to police officers under the laws of this Commonwealth or the rules of the Supreme Court or the ordinances of the township for which a fine or penalty is imposed unless otherwise excepted in this act.

In addition to the above provision Section 1601(c.1)(7) 53 P.S. §66601(c.1)(7) states:

(7) ENFORCEMENT OFFICERS OR AGENTS.-- The board of supervisors may delegate the initial determination of ordinance violation and the service of notice of violation to such officers or agents as the township shall deem qualified for that purpose.

As you can see from the outline of the applicable law, the type of enforcement action depends on the nature of the ordinance. An ordinance could fall under the category of public safety and be enforced as a summary offence, however,

there maybe questions revolved around individuals that start work without a permit. In those instances enforcements as a summary offense would not stop the work until the person applies for the necessary permit, that would be a civil action in the form of injunctive relief. The mere fact that a municipality is authorized, by statute, to impose penalties for violation of an ordinance does not prevent the municipality from seeking injunctive relief against a violation. Section 1601(c.1)(4), 53 P.S. §66601(c.1)(4). Therefore, in the case of some violations, both types of enforcement could be undertaken, an injunction and a summary proceeding. Since it would be the intent to have the application filed and reviewed, it would be more appropriate to enforce a violation by an injunction. Generally, the authority to enforce a municipal ordinance does not deprive the authorized body (board of supervisors) of discretion as to when and how to enforce the particular provisions at any given time.

While the board of supervisors has the discretion on what type of enforcement action to take, who is to take the action is another matter. Municipal enforcement power is limited. A municipality cannot use self help but must enforce the ordinances according to the terms of the ordinance and the Second Class Township Code. Based upon Section 1905, if the police department is to enforce the ordinances, that authority must be given by ordinance. In addition, the Second Class Township Code provides that the board of supervisors may delegate the initial determination of ordinance violation and the service of notice of violation to such officers or agents as the township deems qualified for that purpose. Section 1601(c.1)(7), 53 P.S. §66601(c.1)(7). If the authority is going to be delegated, that should also be set forth in the ordinance.

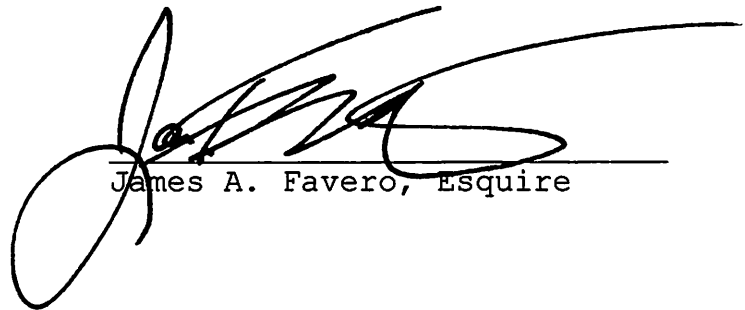
The decision on who is to enforce the various ordinances of the township is up to the board of supervisors. I would suggest that if there are ordinances that are regulating building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water, air or noise pollution that the authority to enforce these types of ordinances be given to the police department. I would recommend this type of enforcement since the penalties for these types of ordinances are like summary offenses and the police are very familiar with these types of actions. Other ordinances that are enforced through civil proceedings

should be delegated to the township solicitor for civil enforcement action. Finally, the board of supervisors could delegate enforcement to a certain individual who is qualified to enforce the various ordinances. No matter what direction the board takes, it should be done in consultation with the police department and any other individuals that the board would desire to delegate authority to. Finally, what ever is decided will have to be done by ordinance. This is especially true if you are going to designate the police department as the enforcement agent.

Since South Buffalo has a zoning ordinance, enforcement of the zoning ordinance must be enforced in accordance with the procedures in Article VI of the Municipalities Planning Code. In the case of zoning violations, enforcement should be carried out by the zoning officer and not the police department. There are enforcement notice requirements under the MPC and enforcement actions are civil in nature. Therefore, I would not suggest that any enforcement of the zoning ordinance be delegated to the police department.

Based upon my review of the applicable law and the issue as presented by the Chief of Police, I have prepared the enclosed ordinance for consideration at the August, 2009 meeting. At the direction of the board, I have advertised the ordinance and it can be adopted at the August meeting.

Should you have any questions, please contact my office.



James A. Favero, Esquire



**James A. Favero**  
**Attorney at Law**

250 Arch Street  
Kittanning, PA 16201

Telephone: (724) 545-7711  
Facsimile: (724) 543-2553

July 22, 2009

South Buffalo Township  
384 Iron Bridge Road  
Freeport, PA 16229

RE: Ordinance Enforcement

***WE ARE ENCLOSING HEREIN THE FOLLOWING ITEM:***

- A Memorandum in the above captioned matter.
- The Enforcement Ordinance to be considered at the August meeting
- A copy of the Legal Notice to be posted at the building
- A draft of the Ordinance to be forwarded to the Police Department for their review.

Very truly yours,



JAMES A. FAVERO

JAF/sfb  
Enclosure