

**EAST FALLOWFIELD TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2009-02

AN ORDINANCE OF THE TOWNSHIP OF EAST FALLOWFIELD AMENDING AND REENACTING CERTAIN PROVISIONS OF THE ORDINANCE KNOWN AS THE EAST FALLOWFIELD TOWNSHIP CONTRACTOR REGISTRATION ORDINANCE NO. 2008-03, WHICH REENACTS, RESTATES AND REPLACES SAID EAST FALLOWFIELD TOWNSHIP CONTRACTOR REGISTRATION ORDINANCE NO. 2008-03.

WHEREAS, on the 29th day of April, 2008, East Fallowfield Township enacted Ordinance 2008-03, which established Contractor registration regulations by requiring Contractor's doing business in East Fallowfield Township to register and pay an annual registration fee;

WHEREAS, the Home Improvement Consumer Protection Act (Senate Bill No. 100, Printer's No. 2484, and signed into law by the Governor of the Commonwealth of Pennsylvania on October 17, 2008, hereinafter referred to as "HICPA") will take effect on July 1, 2009; and

WHEREAS, certain provisions of Ordinance 2008-03 will be pre-empted by HICPA and the Board of Supervisors of East Fallowfield Township is desirous of amending, reenacting, and restating certain provisions of the ordinance known as the East Fallowfield Contractor Registration, Ordinance No. 2008-03, in the Ordinance contained herein, in furtherance of making the provisions consistent with HICPA effective on July 1, 2009.

AND NOW, this ____ day of _____, 2009, it is hereby **ENACTED** and **ORDAINED** by the Board of Supervisors of East Fallowfield Township, Chester County, Pennsylvania, as follows:

Section 1. Short title.

This ordinance shall be known as the "East Fallowfield Township Contractor Registration Ordinance."

Section 2. Applicability.

A. After the passage of this ordinance, it shall be unlawful for any person, firm, corporation, partnership, or other association who takes or offers to perform new construction, installation, repair, remodeling, rehabilitation, demolition, and any other residential or nonresidential construction or demolition work in the Township to not be registered with East Fallowfield Township. This requirement shall require all contractors such as, but not limited to, electricians, air conditioning and heating, plumbing, carpenters, general contractors, concrete, fire alarm, fire extinguisher service, or any other type of contractor performing work for hire in the Township. Contractors excluded shall be for contracting any type work not regulated by the Township. In

the event that any of the conditions or terms of this Ordinance are inconsistent with HICPA, the terms and conditions as contained in HICPA shall preempt this Ordinance effective July 1, 2009.

B. The Board of Supervisors of East Fallowfield Township finds it in the public interest that only qualified persons be permitted to engage in the business of contractor in East Fallowfield Township, and the Commonwealth of Pennsylvania has mandated that Townships maintain on file certification of insurance showing workers' compensation insurance coverage for contractors doing work in the Township which requires a building permit.

Section 3. Definitions.

Definitions relating to contract registration shall be as follows:

CONTRACT — An agreement, whether oral or written, and whether contained in one or more documents, between a Contractor and an owner or another Contractor for the performance of work, including all labor, services, and materials to be furnished and performed thereunder. Effective on July 1, 2009, the definition of a Contractor under this Ordinance shall remain in full force and effect; however it shall specifically exclude agreements considered a “Home Improvement Contract” as defined by HICPA (hereinafter “Home Improvement Contracts”).

CONTRACTOR — Any person, other than the bona fide employee of the owner, who undertakes or offers to perform construction, installation, repair, re-roofing, remodeling, rehabilitation, demolition, plumbing, HVAC, electrical, and any other residential or nonresidential construction, rehabilitation, installation or demolition work in the Township, whether as a general contractor, subcontractor, specialty contractor, or home improvement contractor with respect to the owner. Effective on July 1, 2009, a Contractor entering into a Home Improvement Contract for work considered a Home Improvement defined by HICPA (hereinafter “Home Improvements”), shall specifically be excluded from the above definition.

OWNER — Any property owner, tenant, or other person who orders, contracts for, or purchases the services of a Contractor, or any person, entitled to the work of a contractor, pursuant to a Contract, gift, or otherwise.

PERSON — Any individual, partnership, limited partnership association, limited liability company, corporation, trust, or other legally recognized entity.

REGISTRATION YEAR — The period of time commencing on the first (1st) day of January and ending on the thirty first (31st) day of December each and every calendar year. Notwithstanding anything to the contrary stated above, in the event a Contractor applies for and is granted a registration number between the dates of December 1 and December 31, the Registration Year shall end on December 31 of the subsequent year.

TOWNSHIP — East Fallowfield Township or its designated representative.

Section 4. Administration and enforcement.

The Township shall administer and enforce the provisions of this ordinance.

Section 5. Compliance requirements.

No person shall act as a Contractor in the Township except in compliance with the provisions of this ordinance. Any person, including the Owner, who willfully aids a Contractor or participates with a Contractor in violating any provisions of this ordinance is in violation of this ordinance. The provisions of this ordinance may not be waived by agreement.

Section 6. Limitation of registration.

A registration issued pursuant to this ordinance shall not be construed to authorize the registered contractor to perform any particular type of work or type of business, which is reserved to qualified licensees under other provisions of state or local law.

Section 7. Registration required.

It shall be unlawful for any Contractor to do work within East Fallowfield Township without first obtaining a registration number from the East Fallowfield Township. Effective on July 1, 2009, it shall specifically be unlawful for a Contractor to enter into a Contract for services that are not considered Home Improvements within East Fallowfield Township without first obtaining a registration number from East Fallowfield Township.

Section 8. Registration; application; issuance; renewal.

Every person desiring to continue to engage in or, hereafter to begin to engage in the business of acting as a Contractor in the Township shall register with the Township prior to commencing business. Registration to be renewed at the end of the Registration Year.

Section 9. Application.

A. Such application shall be made by the completion of an application furnished by the Township and the payment of a registration fee established by the Township Board of Supervisors. Each application must contain the information required hereinafter by this ordinance, and must present satisfactory proof of insurance. Each application for a registration shall be signed by the applicant if a natural person, and in the case of an association or a partnership, by a member or partner thereof, and in the case of a corporation, by and officer thereof.

B. Each successful applicant shall be issued a registration number.

Section 10. Expiration.

All Contractors' registrations shall expire at the end of the Registration Year, unless the registration is revoked or suspended.

Section 11. Exceptions or exemptions.

No Contractor's registration shall be required of any person when acting in the particular capacity or particular type of transaction as follows:

- A. Any person who performs labor or services for a Contractor for wages or salary; or
- B. Any person who is required by other commonwealth or local law to attain standards of competency or experience, and who must obtain licensing under such other state or local law as a prerequisite to engage in a trade or profession, and who is acting exclusively within the scope of such trade or profession for which they are currently licensed pursuant to such other law.

Section 12. Insurance required.

A. No Contractor's registration shall be issued unless the applicant files a certificate of insurance with the Township at the time of the registration application. The certificate of insurance shall contain a provision that coverage afforded under the policy will not be canceled until at least 30 days' prior written notice of such cancellation has been given to the Township. The certificate of insurance must evidence policies or insurance, maintained at expense of the applicant, for public liability, property damage, product liability, completed operations, and workers' compensation where applicable. Each policy, except the workers' compensation policy, must have a single occurrence limit of at least \$300,000. In addition to the above, blasting and demolition insurance shall also be required for blasting and demolition contractors, and the reasonable limits of such insurance shall be determined by the Township at the time of application, based on the nature and extent of the applicant's proposed operations.

B. All types and limits of insurance for which certificates are presented at the time of application, based upon which a contract registration is issued, shall be maintained throughout the registration year, or the registration will be suspended or revoked as hereinafter set forth in this ordinance.

Section 13. Fees.

The annual contractor's registration fee shall be seventy five dollars (\$75.00) per year. The amount established may be modified by resolution of the Board of Supervisors and set forth in the Township Fee Schedule. There shall be no prorated reduction in the license fee or portion thereof shall not be returned to a successful or unsuccessful applicant.

Section 14. Contents of application.

The application for registration shall be a printed form provided to the applicant by the Township, and the application shall require a written answer to all questions contained thereon. Failure to answer all questions on the application form shall mean that the application is incomplete and will not be considered until completed. The applicant shall sign the application form. The questions and information required on the application form shall include, but not be limited to the following:

- A. Names of owners, partners, directors, and officers of the applicant and the business address and trade names of the applicant.
- B. A statement as to whether or not any municipalities have refused to issue or have revoked any similar contractor's licenses to the applicant within two years prior to the application, along

with a statement of the location of the jobs, and the names, addresses, and telephone numbers of the party or parties who contracted with the applicant for such jobs.

C. A listing of all convictions within two years prior to the date of the application, for any crimes or offenses under any federal or state criminal statute or common law criminal offense, or for violation of any municipal ordinance, so long as such convictions were for crimes or offenses related to the applicant's work or contracts as a Contractor. The term "conviction" shall include guilty pleas and pleas of nolo contendere. If any such convictions exist, the applicant shall give in writing the caption, cost, and term number of the proceedings leading to the conviction. The applicant shall also explain, in writing, the nature of the conviction.

D. A listing of all unsatisfied civil judgments in any jurisdiction against the applicant if such civil judgment were entered in a lawsuit in which any such judgments were entered, and shall explain in writing the nature of all such civil judgments.

Section 15. Notification of changes in ownership, management, address or trade name.

Every contractor licensee shall, within 10 days after a change in ownership, directors, officers, management, address, or trade name, notify the Township of such change.

Section 16. Criteria for refusal of registration or renewal.

No registration shall be issued or renewed under the following circumstances:

A. The applicant falsely answered any question or questions contained on the application form.

B. The applicant has been convicted within two years prior to the date of the application for any crimes or offenses under any federal or state criminal statute or common law criminal offense or for violation of any municipal ordinance so long as such conviction were for crimes or offenses related to the applicant's work as a contractor. The term "conviction" shall include guilty pleas of nolo contendere.

Section 17. Revocation of registration.

Any contractor registration issued under the provisions of this ordinance may be revoked by the Township under the following circumstances:

A. The registered contractor falsely answered any question or questions contained on an application for registration or renewal of registration previously submitted to the Township.

B. Failure of the registered contractor to maintain during the registration year the policies of insurance required under the provisions of this ordinance.

C. The registered contractor violates any of the terms or provisions of the East Fallowfield Township Building Code or other applicable code, or any terms or provisions of this ordinance.

- D. Failure to obtain a permit (building, plumbing, demolition, HVAC, electrical, etc.) prior to the commencement of work.
- E. The registered contractor willfully deviates from or disregards any plans or specifications for any contracting job in any material respect without first obtaining the consent of the owner in writing to any such change and without first notifying the Township of any such change.
- F. The registered contractor violates any condition or requirement of a building, plumbing, fire prevention, or other applicable permit issued by the Township.
- G. The registered contractor does any business through any person who is subject to the licensing requirements of this ordinance and who is not licensed as required by this ordinance.
- H. The registered contractor conducts a contractor's business in the Township under any name other than that under which the license was granted.
- I. Failure for registered contractor to obtain and have performed the required inspection or failure to obtain the use and occupancy permit prior to occupancy.
- J. The registered contractor fails to comply with an order, demand, or requirement lawfully made by the Township under the authority of this ordinance or any other Township ordinance duly adopted and enforceable.

Section 18. Violations and penalties.

Any person who shall violate a provision of this ordinance or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of this ordinance shall be guilty of a summary offense, punishable by a fine of not less than \$100 or more than \$1,000 and cost, and upon default of the payment of the fine and cost, imprisonment not exceeding 30 days. Each day that a violation continues shall be deemed a separate offense.

Section 19. Municipal liability.

The granting of any contractor registration, under this ordinance, by the Township or any of its designated officials shall not constitute a representation, guarantee, or warranty, of any kind by the Township or any of its officials or employees as to the proper manner construction or repairs, and shall create no liability upon or a cause of action against such public body, officials or employees for any damages or injury that may result pursuant thereto.

Section 20. Repealer. Any ordinance or ordinance provision inconsistent with any of the provisions of this ordinance is hereby repealed to the extent of the inconsistency only; provided, however, that this repeal shall in no manner be construed as a waiver, release or relinquishment of the right to initiate, pursue or prosecute, as the case may be, any proceeding pertaining to any act done which would have constituted a violation of such prior ordinance or ordinance provision. All of said ordinance or ordinance provisions shall remain in full force and effect and are not repealed hereby as they pertain to such acts prior to the effective date of this ordinance.

Notwithstanding anything to the contrary above, Ordinance No. 2008-03 is hereby repealed in its entirety.

Section 21. Severability. Should any section or provision of this ordinance be declared invalid by a court of competent jurisdiction, such determination of invalidity shall not affect the validity of the remaining provisions of this Ordinance.

Section 22. Effective Date. This Ordinance shall become effective (5) days from the date of enactment. Effective on July 1, 2009, this Ordinance shall not be applicable to Home Improvement Contracts.

ENACTED and ORDAINED this ____ day of _____ 2009.

**EAST FALLOWFIELD TOWNSHIP
BOARD OF SUPERVISORS**

George Broadbent, Chairman

Chris Makely, Vice Chairman

Garth Monaghan, Member

Chris Amentas, Member

Gary Barach, Member

ATTEST:

Denise Miller, Secretary