

ORDINANCE NO. 2022-11
(RESTATEMENT, AMENDMENT, AND REPLACEMENT OF ORDINANCE NO. 2022-11)

AN ORDINANCE OF THE TOWN OF MILLERSBURG, INDIANA DELEGATING
MUNICIPAL AUTHORITY FOR PLANNING AND ZONING, SUBDIVIDING OF REAL
ESTATE, BUILDING CONTROL, AND UNSAFE BUILDINGS TO THE
COUNTY OF ELKHART, INDIANA

WHEREAS Indiana Code Chapter 36-1-3 permits any unit in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its governmental or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS the Town Council of the Town of Millersburg, Indiana is the municipal legislative body and authorized by law to adopt ordinances and resolutions governing the administration of planning and zoning, subdividing of real estate, and building control jurisdiction within the Town of Millersburg, Indiana;

WHEREAS the County of Elkhart, Indiana has an advisory plan commission, board of zoning appeals, building department, and building commissioner;

WHEREAS pursuant to Indiana Code Section 36-7-4-410, the legislative body of any municipality located in a county having an advisory plan commission may, by ordinance, designate the county plan commission as the municipal plan commission and also provide that the county board of zoning appeals has jurisdiction within the corporate boundaries of the municipality;

WHEREAS pursuant to Indiana Code Section 36-7-8-7, a municipality may, by ordinance, designate a single agency of the county to administer and enforce a building code and building standards under Indiana Code Section 37-7-8-3;

WHEREAS pursuant to Indiana Code Section 36-7-9, the Unsafe Building Law applies to any county that adopts an ordinance under the Unsafe Building Law which may be applicable to the unincorporated and incorporated territory of the county pursuant to Indiana Code Section 36-1-3-9;

WHEREAS the Town of Millersburg, Indiana desires to delegate and consent to the exercise by the County of Elkhart, Indiana, pursuant to this Ordinance, municipal authority and jurisdiction to administer local planning and zoning under Indiana Code Section 36-7-4, the building department and building standards under Indiana Code Section 36-7-8, and the unsafe building law under Indiana Code Section 36-7-9;

WHEREAS Indiana Code Section 36-7-4-410 provides that any municipality designating a county plan commission as its municipal plan commission may contract annually to pay the county a proportionate part of the expenses that is properly chargeable to the planning services rendered to that

municipality, and Indiana Code Section 36-1-7-2 provides generally that governmental units may contract for services with each other by mutual agreement;

NOW, THEREFORE, BE IT ORDERED, ESTABLISHED, DETERMINED, AND ORDAINED by the Town Council of the Town of Millersburg, Indiana as follows:

1. Planning and Zoning Law.

- a. The Elkhart County Plan Commission is hereby designated as the municipal plan commission for the Town of Millersburg, Indiana. Further, the Elkhart County Board of Zoning Appeals has jurisdiction within the corporate boundaries of the Town of Millersburg, Indiana. The Elkhart County Plan Commission and the Elkhart County Board of Zoning Appeals as so designated have for the Town of Millersburg, Indiana all the powers and duties granted, under the Advisory Planning Law, to a municipal plan commission and board of zoning appeals.
- b. All planning and zoning ordinances and all policies and procedures heretofore adopted, and now in force and effect by the Elkhart County Plan Commission, the Elkhart County Board of Zoning Appeals, and the Board of Commissioners of the County of Elkhart, Indiana, as the legislative body of Elkhart County, Indiana, to include a Comprehensive Plan, Zoning Ordinance, and Subdivision Control Ordinance, be, and the same hereby are, approved by the Town of Millersburg, Indiana and made binding upon all real estate situated therein.
- c. All planning and zoning ordinances and all policies and procedures hereafter adopted, and hereafter placed in force and effect by the Elkhart County Plan Commission, the Elkhart County Board of Zoning Appeals, and the Board of Commissioners of the County of Elkhart, Indiana, as the legislative body of Elkhart County, Indiana, to include changes, revisions, and amendments of the Comprehensive Plan, Zoning Ordinance, and Subdivision Control Ordinance, be, and the same hereby will be, binding upon the Town of Millersburg, Indiana and all real estate situated therein, upon approval thereof by the Town of Millersburg, Indiana.
- d. The legislative function of dividing the Town of Millersburg, Indiana into zoning districts and approving zoning maps, as provided in the Elkhart County Zoning Ordinance, shall be retained and carried out by the Town Council of the Town of Millersburg, Indiana consistent with the rules, regulations, and ordinances otherwise adopted by or for the Elkhart County Plan Commission and the Elkhart County Board of Zoning Appeals; further, that all such zoning districts and zoning maps heretofore adopted by the Town Council of the Town of Millersburg, Indiana be, and the same are, hereby continued in full force and effect until amended or repealed by action of the Town Council of the Town of Millersburg, Indiana taken under authority of the advisory local planning and zoning laws of the State of Indiana.

- e. The Town Council of the Town of Millersburg, Indiana reserves the right, ability, and authority to establish and promulgate rules, regulations, and standards pertaining to streets, curbs, water, sewer, drainage, and other utility and municipal services for real estate situated within the corporate limits of the Town of Millersburg, Indiana.

2. County Building Department and Building Standards.

- a. The Town Council of the Town of Millersburg, Indiana hereby designates the Elkhart County Building Department to administer and enforce the Elkhart County Building Code Ordinance adopted and established by the County of Elkhart, Indiana under Indiana Code Section 36-7-8-3 pursuant to Indiana Code Section 36-7-8-7.
- b. The Elkhart County Building Code Ordinance and all related requirements, standards, permit provisions, and all policies and procedures heretofore or hereafter adopted, and now or hereafter placed in force and effect by the Board of Commissioners of the County of Elkhart, Indiana, as the legislative body of Elkhart County, Indiana, be, and the same hereby are, made binding upon the Town of Millersburg, Indiana and all real estate situated therein.

3. Unsafe Building Law.

- a. Pursuant to Indiana Code Section 36-7-9 and Indiana Code Section 36-1-3-9, the Town Council of the Town of Millersburg, Indiana hereby designates, by ordinance, the Elkhart County Building Department and the Elkhart County Building Commissioner to administer and enforce the Elkhart County Unsafe Building Ordinance on behalf of the Town of Millersburg, Indiana.
- b. The Elkhart County Unsafe Building Ordinance, including all related standards, requirements, and authorities, and all policies and procedures heretofore or hereafter adopted and now or hereafter placed in force and effect by the Board of Commissioners of the County of Elkhart, Indiana as the legislative body of Elkhart County, Indiana, be, and the same hereby are, made binding upon the Town of Millersburg, Indiana and all real estate situated therein.
- c. With respect to demolition requirements and other costs necessary to bring an unsafe building and premises into compliance, the Town Council of the Town of Millersburg, Indiana understands and acknowledges that the Elkhart County Building Department may require the Town of Millersburg, Indiana to advance the necessary funds. The Town Council of the Town of Millersburg, Indiana understands that the Elkhart County Building Department will attempt to reclaim any funds advanced and return them to the Town of Millersburg, Indiana.

4. Administrative Expenses.

- a. All application, permit, or other fees and expenses received and all fines, penalties, costs, and other recoupments collected by the County of Elkhart, Indiana in the administration of planning and zoning, subdividing of real estate, and building control jurisdiction within the Town of Millersburg, Indiana may be retained by the County of Elkhart, Indiana. The Town of Millersburg, Indiana understands that the County of Elkhart, Indiana does not otherwise charge a fee to the Town of Millersburg, Indiana for the performance of these services.
- b. The Town of Millersburg, Indiana, however, understands that if the Town of Millersburg, Indiana requests additional services from the County of Elkhart, Indiana in the administration of planning and zoning, subdividing of real estate, and building control jurisdiction, such additional services may be subject to further agreement, terms, provisions, and fees.

5. Repealing Effect.

This Ordinance repeals all prior ordinances, resolutions, and parts thereof in conflict with this Ordinance. This Ordinance restates, amends, and replaces Ordinance No. 2022-11 dated September 14, 2022.

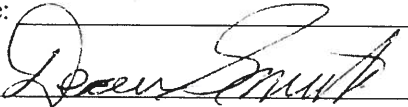
ORDAINED AND ADOPTED this 16 day of November, 2022.

TOWN COUNCIL OF THE TOWN OF MILLERSBURG, INDIANA

By: 

Printed Name: Jim Winklee

Title: _____

By: 

Printed Name: DEBRA SMITH

Title: _____

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

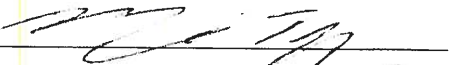
Title: _____

By: _____

Printed Name: _____

Title: _____

ATTEST:

By: 

Printed Name: Mackenzie Taylor

Title: Town Clerk-Treasurer

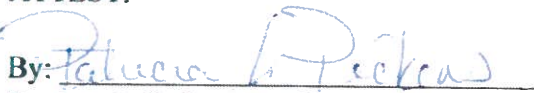
ACCEPTANCE

The Board of Commissioners of the County of Elkhart, Indiana does hereby accept the above-referenced Ordinance and the delegation of and consent to the exercise of jurisdiction by the County of Elkhart, Indiana on behalf of the Town of Millersburg, Indiana with respect to the planning and zoning law, the building department and building standards law, and the unsafe building law this 6th day of February, 2023.

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By: 
Bradley D. Rogers, President

ATTEST:

By: 
Patricia A. Pickens, Auditor