

BOROUGH OF MACUNGIE LEHIGH COUNTY, PENNSYLVANIA

Ordinance No. 2018- 04

AN ORDINANCE AUTHORIZING THE BOROUGH OF MACUNGIE TO ENTER INTO AN AMENDED INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE BOROUGHS OF EMMAUS AND ALBURTIS AND THE TOWNSHIPS OF LOWER MACUNGIE, LOWER MILFORD, AND UPPER MILFORD TO IMPLEMENT THE SOUTHWESTERN LEHIGH COUNTY COMPREHENSIVE PLAN.

WHEREAS, the Boroughs of Macungie, Alburtis and Emmaus and the Townships of Lower Macungie, Lower Milford, and Upper Milford (the "**Participants**") desire to enter into an agreement to implement their multi-municipal comprehensive plan (the Southwestern Lehigh County Comprehensive Plan) in order to satisfy the requirements of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10101 *et seq.*; and

WHEREAS, the Macungie Borough Council is authorized under the provisions of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S.A. § 2301 *et seq.* (the "Act"), to enter into agreements with other political subdivisions for the purpose of carrying out essential governmental functions; and

WHEREAS, the Macungie Borough Council is authorized under the provisions of the Pennsylvania Municipalities Planning Code, 53 P.S §§ 11103 and 11104, to enter into implementation agreements with other political subdivisions for the purpose of implementing regional comprehensive plans; and

WHEREAS, the Borough of Macungie ("Borough") has determined and agreed to implement the Southwestern Lehigh County Comprehensive Plan for the Boroughs of Macungie, Alburtis and Emmaus and the Townships of Lower Macungie, Lower Milford, and Upper Milford ("Plan"), said Plan being dated October 2017; and

WHEREAS, the Borough previously adopted Ordinance No. 2017-05 which authorized the Borough to enter into an implementation agreement with the Participants; and

WHEREAS, since the adoption of Ordinance No. 2017-05 the Participants have agreed to amend the implementation agreement to address certain issues; and

WHEREAS, the Borough now intends to and hereby does approve and authorize the execution of the amended implementation agreement as set forth herein.

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Macungie, Lehigh County, Pennsylvania, as follows:

SECTION 1. Chapter 31, Intermunicipal Agreements, of the Macungie Borough Code of Ordinances is hereby amended by amending Article V to read as follows:

ARTICLE V

Agreement to Implement the Southwestern Lehigh County Comprehensive Plan.

§31-10 AUTHORIZATION OF ENTRY INTO INTERGOVERNMENTAL COOPERATION AGREEMENT.

The proper officers of the Borough of Macungie are hereby authorized and directed to execute and deliver on behalf of the Borough, the Intergovernmental Cooperation Agreement (the "Agreement"), in substantially the form attached hereto and marked as ***Exhibit "A"***, which is incorporated herein by reference and made a part of this Article, with respect to the implementation of the Southwestern Lehigh County Comprehensive Plan dated October 2017 for the Boroughs of Alburtis, Emmaus, and Macungie and the Townships of Lower Macungie, Lower Milford, and Upper Milford. The President of Borough Council and other proper officers are hereby authorized and directed to execute the Agreement in substantially the form attached hereto on behalf of Macungie Borough upon the approval of the Agreement by all of the participating municipalities.

§31-11 DURATION OF AGREEMENT.

The Agreement shall be valid, effective and enforceable for and against all parties thereto for an indefinite term. Each party to the Agreement may, upon the requisite written notice to the other parties, withdraw from the Agreement.

§31-12 PURPOSE OF AGREEMENT.

The Agreement is intended to authorize the participating municipalities to implement the above-referenced Southwestern Lehigh County Comprehensive Plan for the Boroughs of Alburtis, Emmaus, and Macungie and the Townships of Lower Macungie, Lower Milford, and Upper Milford. The participating municipalities, by way of the Agreement, intend to and have agreed to amend their respective ordinances to be generally consistent with the above-referenced Plan.

§31-13 AUTHORIZATION OF FURTHER ACTION.

The proper officers of the Borough are hereby authorized and directed to take all such actions, execute, deliver, file and/or record all such documents, publish all notices and otherwise comply with the provisions of this Ordinance and the Act insofar as the transaction contemplated by this Ordinance, in the name and on behalf of the Borough.

SECTION 2. **Repealer**

All ordinances or parts of ordinances that are inconsistent herewith are hereby repealed. In particular, Ordinance No. 2017-05 is hereby repealed and shall be replaced by this Ordinance and the attached Agreement.

SECTION 3. **Severability**

If any section, paragraph, sub-section, clause or provision of this Ordinance shall be declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than that portion specifically declared invalid.

SECTION 4. **Effective Date**

This Ordinance shall become effective the earliest date permitted by law.

DULY ORDAINED and ENACTED by the Borough Council of the Borough of Macungie, this 5th day of November, 2018, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF MACUNGIE

Christopher T. Becker

Attest:

Christopher T. Becker
Council President

Chris L. Boehm
Chris L. Boehm, Borough Manager

AND NOW, this 5th of November , 2018, the above Ordinance is
hereby **APPROVED**.

Ronald Conrad
Ronald Conrad, Mayor

ATTEST:

I do hereby certify that this is a true and correct copy of the proposed Ordinance of Macungie Borough authorizing the execution of the Southwestern Lehigh County Comprehensive Plan Intergovernmental Implementation Agreement, being advertised for enactment by the Macungie Borough Council on November 5, 2018.

**INTERGOVERNMENTAL COOPERATION AGREEMENT FOR
IMPLEMENTING A MULTI-MUNICIPAL COMPREHENSIVE PLAN
FOR MEMBER MUNICIPALITIES IN SOUTHWEST LEHIGH COUNTY,
PENNSYLVANIA CONSISTING OF THE TOWNSHIPS OF LOWER
MACUNGIE, LOWER MILFORD AND UPPER MILFORD, AND THE
BOROUGHS OF ALBURTIS, EMMAUS AND MACUNGIE**

This Intergovernmental Cooperation Agreement (hereafter referred to as Agreement), dated this _____ day of _____, 2018, for implementing the multi-municipal comprehensive plan titled *Plan Southwest Lehigh* (hereinafter referred to as the *Plan*) is made by and among Lower Macungie Township, Lower Milford Township, Upper Milford Township, Alburtis Borough, Emmaus Borough, and Macungie Borough (hereinafter referred to collectively as Municipalities and individually as Municipality).

BACKGROUND: The Municipalities entered into an agreement with the Lehigh Valley Planning Commission to assist with the development of an updated multi-municipal comprehensive plan; having previously adopted a multi-municipal comprehensive plan in 2005. The updated *Plan* has been adopted as the Comprehensive Plan for each Municipality; copies of each Municipality's resolution of adoption are attached as Exhibit A. The Municipalities are now desirous of establishing the framework for implementing *Plan Southwest Lehigh*.

SECTION 1: AUTHORITY

Article XI of the Pennsylvania Municipalities Planning Code (hereinafter referred to as MPC) enables governing bodies of municipalities to enter into intergovernmental cooperation implementation agreements to implement comprehensive plans. The Intergovernmental Cooperation Law enables municipalities to jointly cooperate in the performance of their respective government functions, powers, or responsibilities pursuant to a written agreement.

SECTION 2: PURPOSE

As set forth in the *Plan*, the purpose of this Agreement is:

- A. To provide for implementation of the *Plan* pursuant to MPC Article XI and to afford the Municipalities the benefits and opportunities available to participants in a multi-municipal plan under the provisions of the MPC.
- B. To facilitate the categories of land use as recommended by the *Plan*.
- C. To provide for the sharing of those land uses identified in the *Plan* among the municipalities.
- D. To protect and maintain the separate identity of the Municipalities.

SECTION 3: POWERS AND SCOPE OF AUTHORITY

This Agreement provides a framework for the Municipalities to cooperatively implement the *Plan* in accordance with the MPC and the terms of this Agreement, including specific powers and responsibilities hereinafter set forth, and to do all acts necessary or desirable within the scope of each Municipality's reasonable resources to carry out the purposes of this Agreement.

The Municipalities understand and agree that the implementation of the *Plan* and the achievement of general consistency between each Municipality's land use ordinances and the *Plan* must be accomplished in order to enable the Municipalities to take full advantage of the benefits and opportunities of the multi-municipal comprehensive planning. Each Municipality understands and agrees that it shall be principally responsible to achieve and maintain general consistency between its land use ordinances and the *Plan*.

The *Plan* shall be deemed to be incorporated into this Agreement.

SECTION 4: SOUTHWEST LEHIGH STEERING COMMITTEE

The *Plan* contemplates the establishment of a Committee to monitor, on a voluntary basis, land development plans and uses of regional impact.

- A. By this Agreement, the Municipalities hereby form a commission to be known as the Southwest Lehigh Steering Committee (hereinafter referred to as SWLSC).
- B. Members of the SWLSC shall include one representative and one alternate to be appointed annually by each Municipality. It is recommended that the representatives be selected from among the Municipalities' staff, but may include elected or appointed officials at the discretion of the municipality.
- C. The SWLSC shall conduct public meetings and be subject to the Sunshine Act (65 Pa.C.S. §701 et seq.) and the Open Records Law (65 Pa.C.S. §66.1 et seq.) SWLSC shall meet at least semianually.
- D. Each municipality shall assume responsibility for hosting meetings of the SWLSC on a rotating basis each year.

SECTION 5: ADOPTION OF CONFORMING ORDINANCES

Following the adoption of the *Plan* and any subsequent amendment by all the Municipalities, each Municipality will review and amend, within two (2) years of adoption, its zoning and subdivision ordinances so as to be generally consistent with the *Plan* or any subsequent amendment. Amended ordinances shall provide for the sharing of uses among municipalities, in accordance with the Pennsylvania Municipalities Planning Code. Any use sharing beyond what is identified within the *Plan* must undergo an amendment to the *Plan* and this Agreement before a Municipality may make use changes. Any zoning amendment adopted by a Municipality shall be generally consistent with the *Plan*.

SECTION 6: GENERAL CONSISTENCY

Prior to a Municipality submitting their draft ordinance amendments to the Lehigh Valley Planning Commission for review and comment, the draft ordinance amendments shall be submitted to the SWLSC for review and comment upon general consistency with the *Plan*. The SWLSC shall be guided by the definitions of "general consistency" and "consistency" as set forth in the MPC, as amended from time to time. The Municipality shall review and consider the comments of SWLSC, but is not bound by those comments, and shall ultimately make its own determination if generally consistent with the Plan, subject to the provisions of Section 11.

Each municipality shall bear its own costs with respect to preparation and review of ordinance amendments under this Section. In addition, if amending the Comprehensive Plan, the municipality proposing specific amendments shall bear the entire cost with respect to any consulting, legal, and advertising fees association with making the change.

SECTION 7: DEVELOPMENTS OF REGIONAL SIGNIFICANCE AND IMPACT

Upon a Municipality receiving an application, including sketch plans, for a Development of Regional Significance and Impact (hereinafter referred to as DRI) as defined by the *Plan*, the Municipality shall provide a copy of the application and supporting materials to SWLSC for comment. Copies of the comments provided by the SWLSC to the Municipality shall be distributed by the Municipality at their cost, to all member Municipalities.

In addition to DRI applications, all applications for a development which lies within 500 feet of the boundary of a neighboring member municipality, shall submit notification to that neighboring member municipality within ten (10) days of receipt of the application. Notification shall include a copy of the development application.

SECTION 8: IMPLEMENTATION ROLES AND RESPONSIBILITIES

The Municipalities will generally assume the responsibility and role of implementing the recommendations contained in the *Plan* and each Municipality shall make sincere, reasonable efforts within its capabilities, schedules, budgets, and resources.

SECTION 9: ANNUAL REPORTS

By April 1 of each year following execution of this agreement, each Municipality shall prepare and submit a report to the SWLSC, as well as the LVPC. The report shall address activity from the previous year pursuant to this Agreement and an action plan outlining implementation of the *Plan*.

Upon receipt of the Municipalities' reports, the SWLSC shall review and compile a report outlining the general status of the *Plan* and making any necessary recommendations of action to be taken in the current or following year. The report of the SWLSC shall be distributed to all member Municipalities. Such reports shall include summaries of public infrastructure needs in

growth areas and progress toward meeting those needs through capital improvement plans and implementing actions and reports on development applications and dispositions for residential, commercial and industrial development in each participating municipality for the purposes of evaluating the extent of provision for all categories of use and housing for all income levels within the region of the plan

SECTION 10: AMENDMENT AND REVIEW OF THE PLAN

The *Plan* may be amended by the formal approval of all Municipalities in accordance with the requirements of the MPC. A proposed amendment to the *Plan* shall be submitted to the SWLSC who shall render its recommendation with respect to a proposed amendment to the *Plan* in writing and provide a copy thereof to each Municipality.

The *Plan* shall be reviewed at least every ten years after plan adoption in accordance with the procedures and requirements of the MPC. Each Municipality shall submit their comments to the SWLSC who will compile a report and recommendation whether the *Plan* should be amended, a comprehensive update undertaken or develop a new comprehensive plan.

SECTION 11: DISPUTE RESOLUTION

Any dispute resulting from and/or issue arising as a result of this Implementation Agreement, or the interpretation of the *Plan* and/or the consistency of implementing plans and ordinances with the *Plan*, shall be resolved as follows: The disputing Municipalities shall agree to discuss and negotiate in good faith in an attempt to resolve the dispute amicably and informally. This Agreement does not restrict or limit the Municipalities from exercising any other legal causes of action the disputing Municipalities may have in relation to this Agreement and the disputes that may arise in relation thereto, in accordance with 53 Pa. C.S.A. 2315.

SECTION 12: EXECUTION, EFFECTIVE DATE AND TERMINATION

- A. To enter into this Agreement and commence implementation of the Comprehensive Plan, each governing body of a Municipality shall adopt an ordinance approving this Agreement.
- B. This Agreement shall become effective on the first day of the calendar month immediately following adoption by all the Municipalities of ordinances approving this Agreement.
- C. Any Municipality shall have the right to terminate its participation in this Agreement by adoption of an ordinance terminating such Municipality's participation in the Agreement or the *Plan*. Should a Municipality elect to terminate its participation, they shall provide one year's written notice thereof to other Participation.

IN WITNESS WHEREOF, the Municipalities, intending to be legally bound hereby, have caused this Intergovernmental Cooperation Agreement to be subscribed, as of the dates set forth under the duly authorized signature of each Municipality.

ATTEST:

BOROUGH OF ALBURTIS

Name and Title (Print)

Signature

Date

BOROUGH OF EMMAUS

Name and Title (Print)

Signature

Date

BOROUGH OF MACUNGIE

Christopher T. Becker, Council President
Name and Title (Print)

Christopher T. Becker 11-5-2018
Signature Date

LOWER MACUNGIE TOWNSHIP

Name and Title (Print)

Signature

Date

LOWER MILFORD TOWNSHIP

Name and Title (Print)

Signature

Date

UPPER MILFORD TOWNSHIP

Name and Title (Print)

Signature

Date

