

**ORDINANCE**  
**NO. 3161**

**AN ORDINANCE OF THE TOWNSHIP OF UPPER DARBY, COUNTY OF DELAWARE, COMMONWEALTH OF PENNSYLVANIA, AMENDING ORDINANCE 3139 AND PROVIDING FOR THE TRANSFER OF UNENCUMBERED ARPA SUPPLEMENTAL APPROPRIATION FUNDS TO THE 2024 BUDGET AS ARPA REVENUE REPLACEMENT; REPEALING INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, Upper Darby Township Council (“Council”) adopted a budget for the calendar year 2024 on January 17, 2024,

**WHEREAS**, pursuant to Section 909 (a) of the Home Rule Charter of the Township of Upper Darby, if during the fiscal year the Chief Administrative Officer certified that there are available for appropriation revenues in excess of those estimated in the budget, Council by ordinance may make supplemental appropriations for the year up to the amount of such excess,

**WHEREAS**, the U.S. Department of Treasury calculated Upper Darby Township’s direct allocation from the Coronavirus State and Local Fiscal Recovery Fund at \$41.7 million to be provided to the Township in two (2) installments with one received in May 2021 and the second installment was received in July 2022 (collectively “ARPA funds” or “American Rescue Plan Allocation”),

**WHEREAS**, Ordinance No. 3139 provides for a specific supplemental appropriation in the amount of \$3,800,000.00 for the Upper Darby Township Business District Revitalization from the American Rescue Plan allocation,

**WHEREAS**, pursuant to Section 910 of the Home Rule Charter, every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered,

**WHEREAS**, pursuant to Section 909 (D) of the Home Rule Charter, at any time during the fiscal year, the Mayor may transfer part or all of any unencumbered appropriation balance among programs within a department, office, or agency; and, upon written request by the Mayor, the Council may by ordinance transfer part or all of any unencumbered appropriation balance from one department, office, or agency to another,

**WHEREAS**, pursuant to Pennsylvania caselaw, unencumbered funds have been defined to include, *inter alia*, funds for which no obligation in the form of purchase orders, contracts or salary commitments exist. *See Shoemaker v. Greencastle-Antrim Bd. of School Directors*, 403 A.2d 1018, 44 Pa.Cmwlth. 136 (1979) and encumbrance has been defined by the Pennsylvania’s Governor’s Office of the Budget as, “that portion of an

appropriation that represents an expenditure pursuant to a contract, a purchase order, or a known demonstrable bill but where an actual disbursement has not been made;" and,

**WHEREAS**, by written request, the Mayor has expressed a desire to transfer the remaining balance of the supplemental appropriation for the Upper Darby Township Business District Revitalization to the 2024 Budget as ARPA Revenue Replacement.

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the Township of Upper Darby, as follows:

**SECTION 1.** Ordinance 3139 is amended as set forth on Appendix "A" hereto and incorporated herein by reference.

**SECTION 2.** The remaining, unencumbered balance of the supplemental appropriation in the amounts of \$3,767,108.42 for the Upper Darby Township Business District Revitalization shall be transferred to the 2024 Budget as ARPA Revenue Replacement.


**SECTION 3.** If any section, sentence, clause, or word of this Ordinance shall be declared illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose the validity of the remaining portions of this Ordinance.

**SECTION 4.** All ordinances or parts thereof inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed.

**SECTION 5.** This ordinance shall become effective immediately.

**ENACTED and ORDAINED this 21<sup>st</sup> day of August 2024.**

ATTEST:

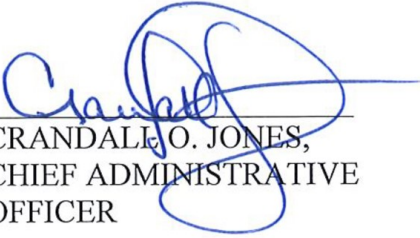
  
MICHELLE BILLUPS  
SECRETARY OF COUNCIL  
COUNCIL

BY:

  
HAFIZ TUNIS, JR.  
PRESIDENT OF

**Ordinance No. 3161 is APPROVED this 21<sup>st</sup> day of August 2024.**

ATTEST:

  
CRANDALL O. JONES,  
CHIEF ADMINISTRATIVE  
OFFICER

  
EDWARD BROWN, MAYOR

**APPENDIX "A"**

**REPEAL OF ORDINANCE 3139**

SECTION 1.  
ALLOCATION

~~Downtown Drexel Hill (The 4600 block of State Road to the 700 block of Burmont, to the 4200 block of Ferne Boulevard to the 500 block of Burmont) \$1,000,000~~  
~~69" Street (West Chester Pike to Ruskin Lane) \$100,000~~  
~~West Chester Pike Business District (Township Line to Victory Avenue) \$1,000,000~~  
~~Long Lane Business District (Unit block of Long Lane to Seaford RD) \$600,000~~  
~~Garret Road East (Sherbrook to Chestnut Street) \$100,000~~  
~~Garret Road West (Edmonds to Childs) \$100,000~~ **\$32,891.58**

3,800,000 **\$32,891.58**

- a.) Program Allocation. Upper Darby Township Council makes the supplemental appropriation of 3,800,000 **\$32,891.58** for the Revitalization of the Business District to be administered by the Director of Community and Economic Development.
- b.) The 3<sup>rd</sup> Party Company (herein referred to as the Compliance Officer) will make any needed adjustment to the ARPA allocations among Township departments to ensure compliance with ARPA guidelines established by the U.S. Department of the Treasury;
- c.) The Compliance Officer will bring any such adjustments to these allocations that are made to comply with ARPA guidelines to Mayor Keffer, Chief Administrative Officer and the Upper Darby Township Council, for approval by Council prior to authorizing a Township department to expend newly-allocated ARPA funds; and,
- d.) That the Acting Township Finance Director is authorized to establish the necessary accounts and accounting procedures to carry out the intent of this Ordinance.

SECTION 2. All Ordinances and parts thereof inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 3. The terms, conditions and provisions of this ordinance are hereby declared to be severable, and should any portion, part or provision of this ordinance be found by a court of competent jurisdiction to be invalid, unenforceable, or unconstitutional, Upper Darby Township Council hereby declares its intent that the ordinance shall have been enacted without regard to the invalid, unenforceable or unconstitutional portion, part, or provision of this ordinance.

SECTION 4. This ordinance shall become effective immediately.