

ORDINANCE 28-2023

**BOROUGH OF EATONTOWN
COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

**AN ORDINANCE AMENDING CHAPTER 250 OF THE BOROUGH CODE CONCERNING
VACANT AND ABANDONED PROPERTIES AND REDUCING THE RISK OF BLIGHT**

WHEREAS, the State of New Jersey has enacted legislation, Assembly Bill Number A2877 (the "Act"), concerning problems for communities associated with vacant and abandoned properties; and

WHEREAS, the Act empowers municipalities to enact ordinances to address potential problems to the community associated with vacant and abandoned properties; and

WHEREAS, the Borough Council believes it is in the best interest of the residents to amend the Borough Code pursuant to the Act and address potential problems to the community associated with vacant and abandoned properties;

NOW THEREFORE BE IT ORDAINED, by the Borough Council of the Borough of Eatontown, that Chapter 250 "Property Maintenance", of the Borough Code is hereby amended as follows:

Deleted text is shown with a strikethrough: ~~delete~~.

Inserted text is shown in brackets: [inserted].

Instructions are shown in *italics*.

[§ 250-8 Definitions and word usage.

A. Definitions. The following terms, wherever used herein or referred to in this Chapter, shall have the respective meanings assigned to them, unless a different meaning clearly appears from the context:

VACANT AND ABANDONED PROPERTY – any residential or commercial building which is not legally occupied by a mortgager or tenant, which is in such a condition that it cannot be legally reoccupied, and at which at least two of the following conditions exists:

- (1) Overgrown or neglected vegetation; (2) The accumulation of newspapers, circulars, flyers, or mail on the property; (3) Disconnected gas, electric, or water utility services to the property; (4) The accumulation of hazardous, noxious, or unhealthy substances or materials on the property; (5) The accumulation of junk, litter, trash, or debris on the property; (6) The absence of window treatments such as blinds, curtains, or shutters; (7) The absence of furnishings and personal items; (8) Statements of neighbors, delivery persons, or government employees indicating that the property is vacant and abandoned; (9) Windows or entrances to the property that are boarded up or closed off, or multiple window panes that are damaged, broken, and unrepaired; (10) Doors to the property that are smashed through, broken off, unhinged, or continuously unlocked; (11) A risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property; (12) An uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied; (13) The mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing; (14) A

written statement issued by a mortgagor expressing the clear intent of all mortgagors to abandon the property; or (15) Any other reasonable indicia of abandonment.

OWNER - Any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises, with or without accompanying actual possession thereof, or shall have charge, care or control of any dwelling or dwelling unit as owner or agent of the owner, or as fiduciary, including but not limited to: executor, executrix, administrator, administratrix, trustee, receiver or guardian of the estate, or as a mortgagee in possession regardless of how such possession was obtained. Any person who is a lessee subletting or reassigning any part or all of any dwelling or dwelling unit shall be deemed to be a co-owner with the lessor and shall have joint responsibility over the portion of the premises sublet or assigned by said lessee.

AGENT or MANAGING AGENT - The individuals designated by the owner as the person(s) authorized by the owner to perform any duty imposed upon the owner by this chapter. If the owner provides no such designation, the owner shall be considered the agent or managing agent. In any event, the owner shall be responsible for any acts or omission by the designated agent. The term does not necessarily mean a licensed real estate broker or salesman of the State of New Jersey as those terms are defined by the N.J.S.A. 45:15- 3; however, such term may include a licensed real estate broker or salesman of the State of New Jersey if such person designated by the owner as his agent is so licensed. When used in Chapter, the Agent, Managing Agent and/or Operator may be the same person.

OPERATOR - Any person who has charge, care or control of a premises or a part thereof, whether with or without the knowledge and consent of the owner.

§ 250-9 General Requirements

- A. Except as provided in § 250-9E, the owner of any vacant and abandoned property, as defined herein, shall, within 60 days after the building becomes vacant property file a registration statement for each such vacant property with the Director of the Department of Land Use on forms provided by that Director of the Department of Land Use for such purposes.
- B. The owner shall be required to renew the registration annually as long as the property remains vacant and abandoned property and shall pay a registration or renewal fee in the amount prescribed in § 250-16 of this article for each vacant property registered.
- C. The owner shall notify the Director of the Department of Land Use within 30 days of any change in the registration information by filing an amended registration statement on a form provided by the Director of the Department of Land Use for such purpose.
- D. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the Borough against the owner or owners of the property.
- E. This chapter shall not apply to property owned by the federal government of the United States, or any of its agencies or instrumentalities.

§ 250-10 Registration statement requirements; property inspection.

- A. After filing a registration statement or a renewal of a registration statement, the owner of any vacant property shall provide access to the Borough to conduct an exterior and interior inspection of the building to determine compliance with the Borough Code, following reasonable notice, during the period covered by the initial registration or any subsequent renewal.
- B. The registration statement shall include the name, address, email address and telephone number of a natural person 21 years of age or older, designated by the owner as the authorized agent for receiving notices of code violations and for receiving process, in any court proceeding or administrative enforcement proceeding, on behalf of such owner in connection with the enforcement of any applicable code. This person must maintain an office in the State of New Jersey or reside within the State of New Jersey. The statement shall also include the name, address and telephone number of the person responsible for maintenance and security of the property, if different. The owner may designate the agent or managing agent as defined herein, or operator as defined herein.
- C. An owner who is a natural person and who meets the requirements of this article as to location of residence or office may designate himself or herself as agent.
- D. By designating an authorized agent under the provisions of this section, the owner consents to receiving any and all notices of code violations concerning the registered vacant property and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the registered vacant property by service of the notice or process upon the authorized agent. Any owner who has designated an authorized agent under the provisions of this section shall be deemed to consent to the continuation of the agent's designation for the purposes of this section until the owner notifies the Director of the Department of Land Use of a change of authorized agent or until the owner files a new annual registration statement. The designation of an authorized agent in no way releases the owner from any requirement of this article.

250-11 Requirements for owners and authorized agents of vacant property.

Except as provided in § 250-9E, the owner or authorized agent of any property that has become vacant property, and any person maintaining, operating or collecting rent for any such building that has become vacant, shall, within 30 days thereof:

- A. Enclose and secure the building against unauthorized entry as provided in the applicable provisions of the Borough Code or as set forth in rules and regulations supplementing the codes; and
- B. Post a sign affixed to the building indicating the name, address and telephone number of the owner, the owner's authorized agent for the purpose of service of process (if designated pursuant to § 250-10 of this chapter), and the person responsible for day-to-day supervision and management of the building, if such person is different from the owner or authorized agent. The sign shall be of a size and placed in such a

location so as to be readable from the nearest public street or sidewalk, whichever is nearer, but shall be no smaller than 18 inches by 24 inches; and

- C. Continue to secure the building from unauthorized entry and maintain the sign until the building is again legally occupied or demolished or until repair or rehabilitation of the building is complete.

§ 250-12 Creditor responsibility.

A. A creditor as defined under N.J.S.A. 40:48-2.12s(2)(d) and/or N.J.S.A. 40:48-2.12s(3)(i) and filing a summons and complaint in an action to foreclose upon a property that is vacant and abandoned, whether the filing of the summons and complaint is made before or after the determination that the property is vacant and abandoned, shall be responsible for the care, maintenance, security and upkeep of the exterior of the property. This obligation applies whether the determination that the property is vacant and abandoned is made by the public officer pursuant to the provisions of this article, pursuant to the provisions of N.J.S.A. 2A:50-73, or otherwise.

B. A creditor filing a summons and complaint in an action to foreclose on any property located within the Borough shall register the subject property with the Borough's property registration system as a property in foreclosure by filing a registration statement with the Director of the Department of Land Use on the forms provided for such purposes. In connection with registering the property to be foreclosed upon, pursuant to N.J.S.A. 46:10B-51, the creditor shall submit a written notice to the Director of the Department of Land Use that a summons and complaint has been filed against the property. The notice shall include the street address, lot and block number of the subject property, the date the summons and foreclosure complaint were filed, the court in which the action was filed, the docket number, and whether the property is vacant and abandoned. The notice must also contain the full name, address and telephone number of the lender who is responsible for receiving complaints concerning property maintenance and code violations; and the full name and contact information for any person or entity retained by the lender to be responsible for any care, maintenance, upkeep and security for the property.

C. If there is any change in name, address or telephone number for a representative agent, or individual authorized to accept service on behalf of a creditor required to be provided in a notice pursuant to this Chapter following the filing of the summons and complaint, the creditor shall provide notice the Director of the Department of Land Use as soon as possible, but no later than ten (10) from the date of any change in such information.

D. Any lender or creditor that has initiated a commercial foreclosure proceeding to foreclose upon property located within the Borough must provide the Director of the Department of Land Use with a list of all commercial properties in the Borough for which the lender has foreclosure actions pending.

E. If the property subject to the foreclosure action is vacant and abandoned property at the time the summons and complaint are filed, the creditor filing a summons and complaint shall register the property with the Borough pursuant to this Chapter. If the property subject to the foreclosure proceedings becomes vacant and abandoned during the pendency of the action, the creditor filing the summons and complaint shall be responsible for updating the Borough's property registry to reflect the change in status of the subject property.

F. If the property subject to the foreclosure action is vacant and abandoned or becomes vacant and abandoned during the pendency of the action, the creditor who filed the foreclosure action shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property if the property is vacant and abandoned at any time while the property is registered with the Borough's property registration program. In addition to the responsibilities set forth in this Chapter, the creditor's minimum responsibilities under this Section shall also

include, but are not limited to, securing the property against unauthorized entry, posting a sign affixed to the inside of the property that is visible to the public indicating the name, address and telephone number of the creditor or an out-of-State creditor's in-State representative or agent for the purpose of receiving process, and acquiring and otherwise maintaining liability insurance by procuring a vacancy policy covering any damage to any person or any property caused by any physical condition on the property while registered with the property registration program.

G. Any creditor required to register a property under this Section shall pay an initial registration fee of \$500 per property and \$500 for each subsequent year the foreclosure action is pending. If the property is vacant and abandoned as defined by Section 250-8 when the action to foreclose is filed or becomes vacant and abandoned at any time thereafter while the foreclosure action is pending, there shall be an additional registration fee of \$2,000 per property. The creditor shall thereafter pay an annual vacant and abandoned registration fee of \$2000 during the pendency of the foreclosure.

§ 250-13 Notice to creditor; time to correct violations.

- A. If the public officer, or other authorized municipal official, determines that a creditor obligated to care, maintain, secure, and upkeep a vacant and abandoned property has failed to do so in violation of the provisions of this article, the public officer or other authorized municipal official, shall issue a notice of violation to the creditor that has filed a summons and complaint to foreclose on the property in question. The notice shall require the person or entity to correct the violation within 30 days of receipt of the notice, or within 10 days of receipt of the notice if the violation presents an imminent threat to public health and safety. The issuance of this notice shall constitute proof that a property is "vacant and abandoned" for purposes of Section N.J.S.A. 2A:50-73 of the Fair Foreclosure Act.
- B. A creditor subject to this article found by a court of competent jurisdiction to be in violation of the requirement to correct a care, maintenance, security or upkeep violation cited in a notice issued pursuant to this subsection shall be subject to a fine of \$1,500 for each day that the violation continues. Such fine shall commence 31 days following the creditor's receipt of the notice, except if the violation presents an imminent risk to public health and safety, in which case any fine shall commence 11 days following the creditor's receipt of the notice.
- C. If the Borough expends public funds in order to abate a nuisance or correct a violation on a commercial property in situations in which the creditor was given notice pursuant to this Section, but failed to abate the nuisance or correct the violation as directed, the Borough shall have the same recourse against the creditor as it would against a title owner of the property, including but not limited to the recourse provided under N.J.S.A. 55:19-100.

§ 250-14 Designated representative of out-of-state creditor; violation.

In the event the creditor that has filed a summons and complaint in an action to foreclose on a commercial property is located out-of-state, the notice required by § 250-12 shall also contain the full name, address and telephone number of an in-State representative or agent who shall be responsible for the care, maintenance, security and upkeep of the exterior of the property in the event the property becomes vacant and abandoned. An out-of-state creditor found by a court of competent jurisdiction to have violated this provision shall be subject to a fine of

\$2,500 for each day of the violation commencing on the 11th day after the foreclosure complaint is served, as set forth in N.J.S.A. 46:10B-51.

§ 250-15 Registry of vacant and abandoned property and properties subject to foreclosure proceedings.

The Code Enforcement Office will maintain a registry of vacant and abandoned property and properties subject to foreclosure proceedings that tracks the history and plan of action developed by Borough Administration for alleviating such conditions. The registry of [vacant and] abandoned property and properties subject to foreclosure proceedings will be available for public inspection. The Borough Council will receive the current registry of vacant and abandoned property and properties subject to foreclosure proceedings along with the Mayor's proposed budget so that the Council shall have the ability to allocate funds for that year to alleviate those conditions where possible.

§ 250-16 Fee Schedule.

A. For vacant and abandoned properties being registered by the owner:

Vacant Property Registration	Fee Schedule
Initial registration and annual renewal without maintenance or code violations	\$250
The first renewal if any property maintenance or code violations that existed at the time of the previous registration remain unabated at the time of renewal or if there is a new such violation on the property that remains unabated at the time of renewal.	\$500
Any subsequent renewal if any property maintenance or code violations that existed at the time of the previous renewal remains unabated at the time of renewal or if there is a new such violation on the property that remains unabated at the time of renewal.	\$750

B. For vacant and abandoned properties being registered by a creditor:

Vacant Property Registration	Fee Schedule
Initial registration	\$500
Any subsequent renewal	\$2,500

§ 250-17 Administration.

The Director of the Department of Land Use may issue rules and regulations for the administration of the provisions of this article concerning vacant and abandoned property.

§ 250-18 Violations and penalties.

A. Any owner or authorized agent who is not in full compliance with this article or who otherwise violates any provision of this article or of the rules and regulations issued hereunder shall be subject to a fine of not less than \$500 and not more than \$1,000 for each offense. Every day that a violation continues shall constitute a separate and distinct offense. Fines assessed under this article shall be recoverable from the owner and shall be a lien on the property.]

IT IS FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged, and the remainder of this Ordinance shall be deemed valid and effective;

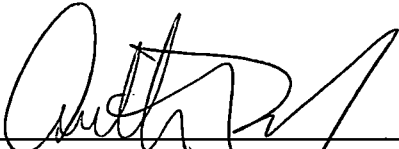
IT IS FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict;

IT IS FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

DATE INTRODUCED: 9/27/2023

DATE ADOPTED: 10/11/2023

APPROVED:



ANTHONY TALERICO, JR., MAYOR
Date: 10-12-2023

ATTEST:



JULIE MARTIN, MUNICIPAL CLERK
Date: 10-12-2023