

O-15-17

**AN ORDINANCE AMENDING CHAPTER 231 OF THE REVISED GENERAL  
ORDINANCES OF THE BOROUGH OF WHARTON, COUNTY OF MORRIS, STATE  
OF NEW JERSEY**

WHEREAS, the Borough of Wharton contains properties which are vacant and/or abandoned in whole or large part; and

WHEREAS, in many cases, the owners or responsible parties of these properties are neglectful of them, are not maintaining or securing them to an adequate standard or restoring them to productive use; and

WHEREAS, it has been established that vacant and abandoned properties cause severe harm to the health, safety and general welfare of the community, including diminution of neighboring property values, increased risk of fire and potential increases in criminal activity and public health risks; and

WHEREAS, the Borough incurs disproportionate costs in order to deal with the problems of vacant and abandoned properties, including but not limited to, excessive police calls, fire calls and property inspections; and

WHEREAS, it is in the public interest for the Borough to establish minimum standards of accountability on the owners or other responsible parties of vacant and abandoned properties in order to protect the health, safety and general welfare of the residents of the Borough; and

WHEREAS, it is in the public interest for the Borough to impose a fee in conjunction with registration of vacant and abandoned properties in light of the disproportionate costs imposed on the Borough by the presence of these properties; and

WHEREAS, pursuant to N.J.S.A. 40:48-2.12s, a municipality may adopt an ordinance to regulate the care, maintenance, security, and upkeep of the exterior of vacant and abandoned properties on which a summons and complaint in an action to foreclose has been filed; and

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Wharton that Chapter 231 of the revised general ordinances of the Borough of Wharton is hereby amended as follows:

**Article V. Registration of Properties that are Vacant or in Foreclosure**

**§ 231-33. Purpose.**

**The provisions of this chapter to protect and preserve the public health, safety and welfare and security and quiet enjoyment of residents and neighborhoods by (i) requiring all property**

owners, including lenders, trustees and service companies to properly maintain vacant and/or foreclosing properties, and (ii) regulating the maintenance of vacant and/or foreclosing properties in order to prevent blighted and unsecured properties.

§ 231-34. Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When consistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

"Borough" means the Borough of Wharton.

"Creditor" means the creditor having a right of foreclosure, including but not limited to the holder of a mortgage on a property, and any agent, servant or employee of the creditor, a loan servicing company, or any successor in interest and/or assignee of the creditor's rights, interests or obligations under the document granting foreclosure rights.

"Days" mean consecutive calendar days.

"Foreclosing" means the legal process by which the creditor of a title holder of a parcel of property, which has been placed as collateral or security for a financial obligation, seeks to divest the title holder of his rights to the property and have the property sold at a sheriff's sale to satisfy the debt after the title holder defaults on the aforesaid financial obligation.

"Non-Residential Property" means any commercial, industrial and mixed-use real estate, or portion thereof, located in the Borough of Wharton, including improvements thereon.

"Nuisance" means:

- A. Any nuisance known at common law or inequity jurisprudence or as provided by the statutes of the State of New Jersey or the ordinances of the Borough.
- B. Any attractive nuisance which may prove detrimental to the health or safety of children, whether in a building, on the premises of a building or upon an unoccupied lot. This includes, but is not limited to: abandoned wells, shafts, basements, excavations, abandoned iceboxes, refrigerators, motor vehicles, boats, any structurally unsound fences or structures, lumber, trash, fences, debris or vegetation, such as poison ivy, oak or sumac, which may prove to be a hazard for inquisitive minors.
- C. Physical conditions dangerous to human life or detrimental to health of persons on or near the premises where the conditions exist.
- D. Insufficient ventilation or illumination in violation of this Code.
- E. Inadequate or unsanitary sewage or plumbing facilities in violation of this Code.
- F. Unsanitary conditions or anything offensive to the senses or dangerous to health in violation of this Code.
- G. Fire hazards.

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

"Property" means any real estate, including residential, commercial, industrial and mixed-use, or portion thereof, located in the Borough of Wharton, including any improvements thereon.

"Residential property" means any property that contains one or more dwelling units used, intended or designed to be occupied for living purposes.

"Security" means measures taken to ensure that the property is inaccessible to unauthorized persons.

"Vacant" means, with regard to any property, that no portion of the property is legally occupied. A property shall not be deemed "vacant," for purposes of this Ordinance: (a) where there is a building on the property containing multiple residential units, if any of the residential units are legally occupied; (b) where the legal occupant has temporarily left the property for vacation or other purposes for a period not exceeding 180 days, possessing both the intent to return and the legal right to return, such as a residential property owner or tenant who resides in another municipality or state for a portion of the year; or (c) where the building is under construction with current valid construction permits, and work is being performed on the property on a regular basis. A mixed-use property is considered "vacant" if the portion of the property dedicated to commercial use is not legally occupied even though one or more residential units may be legally occupied.

§ 231-35. Registration of vacant properties; designation of responsible individual.

- A. All owners of vacant residential property must register such vacant properties with the Borough of Wharton Housing and Zoning Officer within ten (10) days of such property becoming vacant. The registration must be renewed annually as set forth below for as long as the property remains vacant.
- B. All owners of vacant non-residential property must register such vacant properties with the Borough of Wharton Housing and Zoning Officer within thirty (30) days of such property becoming vacant. The registration must be renewed annually as set forth below for as long as the property remains vacant.
- C. Owners of vacant properties shall designate an individual or property management company responsible for the security and maintenance of the property. The individual or property management company responsible for the security and maintenance of the

property shall have an office located in New Jersey within twenty five miles of the property.

**D. The registration required by this section must contain the following information:**

- (1) The owner's name, telephone number, and mailing address. The mailing address may not be a P.O. Box.**
- (2) The street address and tax map designation (lot and block) of the property.**
- (3) Whether the property is residential, non-residential, commercial or mixed use.**
- (4) The name, telephone number, e-mail address and mailing address of an individual or property management company located in the State of New Jersey which is responsible for the security and maintenance of the property. The mailing address may not be a P.O. Box.**
- (5) A statement from the owner certifying that the property was inspected as required by this Ordinance.**
- (6) Proof of utility (gas, electric, water) connections or disconnections.**
- (7) Proof of insurance meeting the requirements of Section 7(c) of this Ordinance.**

**E. The owner shall have a continuing duty to notify the Borough of any changes to the information contained in the registration between registration cycles.**

**F. The Borough of Wharton Housing and Zoning Officer may promulgate forms on which the information in the registration must be provided.**

**G. The owner must notify the Borough of Wharton Housing and Zoning Officer if, at any time subsequent to registration as a vacant property, the property is no longer vacant, and provide proof that the property is no longer vacant.**

**§ 231-36. Registration Fees for Vacant Properties.**

**A. The initial registration fee for vacant residential property shall be five hundred dollars (\$500.00) and must accompany the registration form. The initial registration shall be valid for the remainder of the calendar year in which the property is registered. Renewals for subsequent calendar years shall run from January 1 to December 31, and payment of the renewal registration fee shall be due by January 15<sup>th</sup> of the relevant year. The fee for the first annual renewal shall be one thousand dollars (\$1,000.00); the fee for the second annual renewal shall be three thousand dollars (\$3,000.00); and the fee for the third and subsequent renewals shall be five thousand (\$5,000.00). Registration fees and renewal fees will not be prorated or refunded.**

**B. No fee shall be charged at the time the owner registers vacant non-residential property with the Borough. If a tenant is not secured for the registered vacant non-residential property within six (6) months of the date of registration of the vacant non-residential property, an initial registration fee of five hundred dollars (\$500.00) shall be charged to the owner. The initial registration shall be valid for the remainder of the calendar year in which the property is registered. Renewals for subsequent calendar years shall run from January 1 to December 31, and payment of the renewal registration fee shall**

be due by January 15<sup>th</sup> of the relevant year. The fee for the first annual renewal shall be one thousand dollars (\$1,000.00); the fee for the second annual renewal shall be three thousand dollars (\$3,000.00); and the fee for the third and subsequent renewals shall be five thousand (\$5,000.00). Registration fees and renewal fees will not be prorated or refunded.

- C. No governmental agency shall be required to pay the initial or renewal registration fee.

§ 231-37. Registration of foreclosing properties; designation of responsible individual.

- A. A creditor serving a summons and complaint in an action to foreclose on a mortgage or other lien against any property in this Borough, including but not limited to residential property, shall, within 10 days of serving the summons and complaint, file a registration with the Borough of Wharton Housing and Zoning Officer. The registration must be renewed as set forth below until title to the property has been transferred to a new owner or the foreclosure action is dismissed. A creditor who takes title to a vacant property shall then be required to register as an owner of such vacant property, and to renew such registration for as long as the property remains vacant.
- B. If the property is vacant or the creditor is located outside the State of New Jersey, the creditor must designate an individual or property management company responsible for the security and maintenance of the property. The individual or property management company responsible for the security and maintenance of the property shall have an office in New Jersey located within twenty five miles of the property.
- C. The registration shall contain the following information:
- (1) The creditor's name, telephone number, e-mail address and mailing address. The mailing address may not be a P.O. Box.
  - (2) The street address and tax map designation (lot and block) of the property for which foreclosure has been sought.
  - (3) Whether the property is residential, non-residential, commercial or mixed use.
  - (4) The name, telephone number, e-mail address and mailing address of a designated representative of the creditor who is located in the State of New Jersey and is responsible for receiving complaints of property maintenance and code violations for that property. The mailing address may not be a P.O. Box.
  - (5) If the property is vacant, the name, telephone number, and mailing address of an individual or property management company located in the State of New Jersey which is responsible for the care, maintenance, security and upkeep of the property. The mailing address may not be a P.O. Box.
  - (6) If the property is vacant, a statement from the creditor certifying that the property was inspected as required by this Ordinance.
  - (7) If the property is vacant, proof of utility (gas, electric, water) connections or disconnections.

- D. The creditor shall have a continuing duty to notify the Borough of any changes to the information contained in the registration between registration cycles.
- E. The Borough of Wharton Housing and Zoning Officer may promulgate forms on which the information in the registration must be provided.
- F. Pursuant to N.J.S.A. 40:48-2.12s.c.(1), an out-of-State creditor's failure to appoint an in-State representative or agent for residential properties is subject to fines set forth in Section 10b of this Ordinance.
- G. Once the foreclosure action has terminated, either through dismissal, or transfer of title, the creditor must provide proof of such termination, sale, transfer or occupancy to the enforcement authority within thirty (30) days of sale, exchange or transfer.

§ 231-38. Registration Fees for Foreclosing Properties.

- A. The initial registration fee shall be five hundred dollars (\$500.00) and must accompany the registration form. The initial registration shall be valid for the remainder of the calendar year in which the property is registered. Renewals for subsequent calendar years shall run from January 1 to December 31, and payment of the renewal registration fee shall be due by January 15<sup>th</sup> of the relevant year. The fee for the first annual renewal shall be one thousand dollars (\$1,000.00); the fee for the second annual renewal shall be three thousand dollars (\$3,000.00); and the fee for the third and subsequent renewals shall be five thousand (\$5,000.00). Registration fees and renewal fees will not be prorated or refunded.
- B. No governmental agency shall be required to pay the initial or renewal registration fee.

§ 231-39. Maintenance requirements.

- A. Properties subject to the requirements of this Ordinance must be maintained in accordance with the all applicable federal, state and local laws, ordinances, rules and regulations. The owner, creditor, local individual or local property management company, as appropriate, must inspect the property twice a month for the duration of the vacancy or foreclosure as appropriate.
- B. In addition to, and not in lieu of meeting all other applicable federal, state, and local laws, ordinances, rules and regulations owners, creditors, local individual or local property management companies must maintain property that is subject to this chapter as follows:
  - (1) Property shall be kept free of accumulated snow and ice, weeds, dry brush, dead vegetation, trash, junk, debris, building materials, unregistered vehicles, any accumulation of newspapers, circulars, flyers, notices (except those required by law), and discarded personal items including but not limited to furniture,

clothing, large and small appliances, printed material or any other items giving the appearance that the property is vacant.

- (2) Property shall be kept free of graffiti, tagging, or similar markings. In the event that any graffiti, tagging, or similar markings are placed on the Property, it/they shall either be removed or painted over with an exterior-grade paint matching the color of the portion of the structure where the graffiti, tagging, or similar marking was placed.
  - (3) Front yards, rear yards, and side yards of properties subject to the requirements of this Ordinance shall be landscaped and maintained to neighborhood standards. Landscaping and maintenance shall include, but is not limited to, care of grass, mulch, decorative rock, artificial turf/sod specifically designed for residential or commercial installation, or other ground cover, bushes, shrubs, hedges, trees, or similar plantings, removal or repair of gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch, indoor-outdoor carpet or any similar material, in addition to regular watering, irrigation, cutting, pruning and mowing of required vegetation and removal of all trimmings.
  - (4) Any pool, spa, or other standing body of water shall either be kept in working order so the water remains clear and free of growth, pollutants, and debris, and does not become a harborage for vermin or insects; or drained and kept dry. In either case, properties with pools or spas must comply with the security fencing requirements of the Borough.
- C. The owner of any vacant property shall acquire and maintain liability insurance covering injury or damage to any person or any property in not less than \$300,000 for residential buildings, and \$1,000,000 for non-residential buildings or property.
- D. The owner shall be responsible for property maintenance. However, if the owner of a property vacates or abandons any property on which a foreclosure proceeding has been initiated or if a property is or becomes vacant at the time of or at any point subsequent to the creditor's filing the summons and complaint in an action to foreclose on a mortgage against the subject property, but prior to vesting of title in the creditor or any other third party, and the property is found to be a nuisance or in violation of any applicable State or local code, the enforcement authority shall notify the creditor, which shall have the responsibility to abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by State law or Borough ordinance. The enforcement authority shall include a description of the conditions that gave rise to the violation with the notice of violation and shall provide a period of thirty (30) days (or ten (10) days if the violation presents an imminent threat to public health and safety) from the creditor's receipt of the notice for the creditor to remedy the violation. The issuance of a notice of violation pursuant to this section shall constitute proof that a property is "vacant and abandoned" for the purposes of N.J.S.A. 2A:50-73. If the creditor fails to remedy the violation within that time period, the Township may impose the penalties allowed for the violation of municipal ordinances pursuant to Section 10 of this Ordinance against the

creditor to the same extent as they could be imposed against the owner of the property.

- E. Adherence to this Ordinance does not relieve the owner or creditor of obligations set forth in any other statute, regulation, ordinance, or other source of authority or obligation.

§ 231-40. Inspections.

The enforcement authority shall have the authority to inspect the properties subject to this chapter for compliance and to issue summonses for any violations.

§ 231-41. Borough's authority to abate and impose lien.

Nothing contained herein shall prevent the Borough from taking action to abate a nuisance or correct a violation where the owner or creditor, as applicable, has failed to abate the nuisance or correct the violation on a vacant property or a property in foreclosure after notice and the opportunity to abate or correct. In such situations, the Borough may impose a lien against the property for costs to correct the violation or abate the nuisance. Such lien shall hereafter form part of the taxes next to be assessed and levied upon said lands, the same to bear interest at the same rate as such taxes to be collected and enforced by the same officers and in the same manner as such taxes.

§ 231-42. Governmental entities exempt.

No governmental entity shall be required to register under this Ordinance. However, nothing contained herein shall be construed as granting exemption to the governmental entity from property maintenance or other obligations imposed by any other statute, regulation, or ordinance.

§ 231-43. Implementation.

Upon the effective date of this Ordinance, the owner of any currently vacant property and a creditor pursuing a pending foreclosure shall have thirty (30) days within which to comply with the provisions of this Ordinance.

§ 231-44. Severability.

If any provision or portion of a provision of this Ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

§ 231-45. Repealer.

- A. All ordinances or parts of ordinances, which are inconsistent with any provisions of this ordinance, are hereby repealed as to the extent of such inconsistencies.



***B. If any section, subsection, sentence, clause, phrase, or a portion of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.***

**Article VI. Enforcement.**

**§ 231-~~46~~. Notices and orders.**

- A. Notice to person responsible.** Whenever the Housing Officer determines that there has been a violation of this chapter or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in this chapter to the person responsible for the violation as specified in this chapter. Notices for condemnation procedures shall also comply with this chapter.
- B. Form.** Such notice prescribed in § 231-46A shall be in accordance with all of the following:
- (1) Be in writing.**
  - (2) Include a description of the real estate sufficient for identification.**
  - (3) Include a statement of the violation or violations and why the notice is being issued.**
  - (4) Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this chapter.**
  - (5) Inform the property owner of the right to appeal.**
  - (6) Include a statement of the right to file a lien in accordance with § 231-34C.**
- C. Method of service.** Such notice shall be deemed to be properly served if a copy thereof is:
- (1) Delivered personally;**
  - (2) Sent by certified or first-class mail addressed to the last known address; or**
  - (3) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.**
- D. Penalties.** Penalties for noncompliance with orders and notices shall be as set forth in § 231-47D.
- E. Transfer of ownership.** It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Housing Officer and shall furnish to the Housing Officer a

signed and notarized statement from the grantee, transferee, mortgagee or lessee acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

- F. Other enforcement procedure. Notwithstanding any provisions of this chapter, the Housing Officer is authorized to issue a summons and complaint in the Municipal Court for any violation of this chapter without first giving prior notice of such violation to the person or persons responsible for such violation(s). [Amended 10-23-2006 by Ord. No. O-22-06]

**§ 231-47. Violations.**

- A. Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this chapter.
- B. Notice of violation. Whenever the Housing Officer determines that there has been a violation of this chapter or has reasonable grounds to believe that a violation has occurred, then the enforcing agency may issue and cause to be served upon the owner of the building, structure or premises, or person or persons responsible therefor, a written notice requiring the owner or said persons to terminate or cause to be terminated the violations. The written notice shall state the nature of the violations and a reasonable specified time within which the violations shall be corrected. The written notice shall also require the owner or said persons to take or cause to be taken any affirmative action necessary to correct the violations. The written notice shall also advise the owner or persons responsible that they have a right to file an appeal as set forth under § 231-11 of the chapter. However, the provisions in § 231-46F shall also be in effect.
- C. Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with this chapter shall be deemed to be guilty of a disorderly persons offense, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the Housing Officer may institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this chapter or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.
- D. Violations and penalties. Any person who shall violate a provision of this chapter or fail to comply therewith or with any of the requirements thereof shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense. Any person found to be guilty of any violation of this chapter shall be punishable as provided in Chapter 1, General Provisions, Article I, General Penalty.

- E. Abatement of violation.** The imposition of the penalties herein prescribed shall not preclude the Housing Officer from instituting appropriate action to restrain, correct or abate a violation or to prevent illegal occupancy of a building, structure or premises or to stop an illegal act, conduct, business or utilization of the building, structure or premises.
- F.** Any tenant of a structure located within the Borough of Wharton who receives a notice of eviction pursuant to N.J.S.A. 2A:18-61.2 that results from zoning or code enforcement activity for an illegal occupancy, N.J.S.A. 2A:18-61.1, shall be considered a displaced person and shall be entitled to relocation assistance in an amount up to but not greater than six times the monthly rental paid by the displaced person. The owner-landlord of the structure shall be liable for the payment of relocation assistance pursuant to this section.
- G.** The Borough may pay relocation assistance to any displaced person who has not received the required payment from the owner-landlord of the structure at the time of eviction pursuant to the above Subsection F from a revolving relocation assistance fund established pursuant to N.J.S.A. 20:4-4.1a. All relocation assistance costs incurred by the Borough pursuant to this section shall be repaid by the owner-landlord of the structure to the Borough in the same manner as relocation costs are billed and collected under N.J.S.A. 20:4-4.1 and 20:4-4.2. These repayments shall be deposited into the Borough's revolving relocation assistance fund.
- H.** In addition to requiring reimbursement from the owner-landlord of the structure for relocation assistance paid to the displaced tenant, the Municipal Court shall impose an additional fine for zoning or housing code violations for an illegal occupancy, up to an amount equal to six times the monthly rental paid by the displaced person, to be paid to the Borough by the owner-landlord of the structure.
- I.** In addition to the penalty set forth in § 231-47D, the Borough, after affording the owner-landlord an opportunity for a hearing on the matter, may impose upon the owner-landlord for a second or subsequent violation for an illegal occupancy a fine equal to the annual tuition cost of any resident of the illegally occupied unit attending a public school, which fine shall be recovered in a civil action by a summary proceedings in the name of the Borough pursuant to the penalty enforcement law, N.J.S.A. 2A:58-10 et seq. The tuition cost shall be determined in the manner prescribed for nonresident pupils pursuant to N.J.S.A. 18A:38-19, and the payment of the fine shall be remitted to the appropriate school district.
- J.** The Borough of Wharton hereby establishes a revolving relocation assistance fund into which shall be deposited the following sums, less any money required to be repaid to the State of New Jersey. Any relocation costs and interest thereon paid by an owner of real property who has been held liable for a civil or criminal penalty in the case of any displacement of persons by housing or construction code enforcement pursuant to N.J.S.A. 20:4-4.1 and any sums realized by the Borough relating to any relocation

**cost and interest thereon upon enforcement or liquidation of any property acquired by virtue of enforcement and collected pursuant to N.J.S.A. 20:4-4.2. Moneys appropriated from the fund shall be used by the Borough to provide relocation assistance pursuant to N.J.S.A. 20:4-1 et seq.**

**First Reading: September 25, 2017**

**Second Reading: October 16, 2017**

**ATTEST:**

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**Gabrielle Evangelista,  
Borough Clerk**

**BOROUGH OF WHARTON**

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**WILLIAM CHEGWIDDEN,  
MAYOR**