

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

ORDINANCE #08-2022

ORDINANCE OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING THE BOROUGH CODE TO REPEAL AND REPLACE SECTION 155-8 AND TO REPEAL SECTION 155-11 REGARDING VACANT AND ABANDONED PROPERTIES

WHEREAS, pursuant to N.J.S.A. 40:48-1 et seq. the New Jersey Legislature delegated to municipalities the responsibility to promulgate regulations designed to promote the public health, safety, and welfare of its citizens; and

WHEREAS, properties in foreclosure proceedings can involve properties that are vacant and abandoned or have an increased risk of becoming vacant and abandoned during the foreclosure proceeding; and

WHEREAS, vacant and abandoned properties in foreclosure create a greater risk of blight and can create a wide range of problems for the communities in which they are located. These problems can include fostering criminal activity, creating public health problems, depressing neighboring property values and reducing revenues for municipalities, and otherwise diminishing the quality of life for residents and business operators in those areas; and

WHEREAS, because of the increased risk of blight created by properties in foreclosure, it is important that the Borough possess tools to identify such properties, monitor their status, and mitigate the risk that they become vacant and abandoned and, if vacant and abandoned, lead to blight; and

WHEREAS, the State of New Jersey has enacted statutes intended to assist municipalities in addressing such risks, including requiring that municipalities receive notice of the initiation of a foreclosure action in court in connection with residential properties and authorizing a public officer in a municipality to take certain action against properties that have been abandoned for more than six months; and

WHEREAS, a property registration program provides a valuable tool to confronting the risk of blight created by properties on which foreclosure proceedings have been initiated and such properties that become vacant and abandoned; and

WHEREAS, it is in the best interest of the Borough to operate such a program to address the risk of blight; and

WHEREAS, the Borough Council has determined that it is necessary and appropriate, and in the best interest of the health, safety and welfare of the Borough of Mendham's residents and

members of the public who visit, travel, or conduct business in the Borough of Mendham, to amend the Borough of Mendham's Code regarding vacant and abandoned properties; and

NOW THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Mendham, County of Morris, State of New Jersey, as follows:

SECTION 1. Section 155-8 Vacant and Abandoned Properties of the Borough Code is hereby amended to read as follows:

§155-8 Vacant and Abandoned Properties

§155-8.1 Definitions

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

CREDITOR

A mortgagee or an agent or assignee of a mortgagee, such as the servicer, who has filed a complaint in the Superior Court seeking to foreclose upon a residential or commercial mortgage. If the entity seeking to foreclose upon the residential or commercial mortgage changes as a result of an assignment, transfer, or otherwise after the filing of the foreclosure complaint in the Superior Court, the new entity shall be deemed the Creditor for purposes of this section. For purposes of this section, a Creditor shall not include the State, a political subdivision of the State, a State, county, or local government entity, or their agent or assignee, such as the servicer.

RESPONSIBLE PARTY

The title holder of a vacant and abandoned property or a Creditor responsible for the maintenance of a property.

STREET ADDRESS

An address at which a natural person who is the Responsible Party or an authorized agent actually resides or actively uses for business purposes and shall include a street name or rural delivery route.

VACANT AND ABANDONED PROPERTY

Any residential or commercial building which is not legally occupied by an owner, a mortgagor or tenant, which is in such condition that it cannot be legally reoccupied, and two or more of the conditions in exist:

- (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.

§155-8.2 Property Registration Program

- (a) Purpose. The purpose of this section is to create a Borough Property Registration Program for the purposes of identifying and monitoring vacant and abandoned residential and commercial properties within the Borough.
- (b) Responsibilities. The Borough Property Registration Program shall be responsible for regulating the care, maintenance, security, and upkeep of the exterior of vacant and abandoned residential and commercial on an annual basis.
- (c) Official. The Borough Code Enforcement Officer shall be responsible for administration of The Borough Property Registration Program.

§155-8.3 Certificate of Registration for Vacant and Abandoned Property

- (a) The Responsible Party for a vacant and abandoned property shall file a certificate of registration with the Clerk of the Borough within 90 days after the property becomes vacant and abandoned or within 30 days after the Responsible Party assumes ownership of or responsibility for an already vacant and abandoned property, whichever is later.
- (b) The certificate of registration shall be filed on forms prescribed by the Clerk and shall contain:

- (1) the name, street address, and telephone number of a natural person who resides or maintains an office within the State and who is either the Responsible Party or an authorized agent designated by the responsible party to receive notices and complaints of property maintenance and code violations on behalf of the responsible party.
 - (2) the name, street address, and telephone number of the person responsible for maintaining the property, if different; and
 - (3) evidence of any liability insurance
- (c) A Responsible Party for a vacant and abandoned property shall file an amended certificate of registration within 30 days after any change in the information required to be included thereon.
- (d) A certificate of registration shall remain valid for one year and shall be renewed on an annual basis if the property remains vacant and abandoned.
- (e) An annual fee of \$250 for a certificate of registration for a vacant and abandoned property shall be paid to the Clerk.
- (f) If there is an outstanding property maintenance or code violation on a vacant and abandoned property that remains unabated at the time of renewal, the Responsible Party shall pay an additional fee of \$500.
- (g) If there is an outstanding property maintenance or code violation on a vacant and abandoned property that remains unabated at the time of a subsequent renewal, the Responsible Party shall pay an additional fee of \$750.

§155-8.4 Duties of Responsible Party

- (a) Forty-five (45) days after the Borough notifies the Responsible Party that the property is vacant and abandoned and until the property is reoccupied, the Responsible Party for a vacant and abandoned property, shall:
- (1) Enclose and secure the property against unauthorized entry;
 - (2) Post a sign affixed to the inside of the property and visible to the public indicating the name, address, and telephone number of the Responsible Party, any authorized agent designated by the Responsible Party for the purpose of receiving service of process, and the person responsible for maintaining the property if different
 - (3) Acquire and otherwise maintain liability insurance by procuring a vacancy policy, covering any damage to any person or any property caused by any physical condition of the property.
- (b) This section shall not be construed to diminish any property maintenance responsibilities of property owners who are not subject to the provisions of this

section.

§155-8.5 Residential or Commercial Foreclosures

- (a) The Creditor filing a summons and complaint in an action to foreclose shall, in addition to the notice provided to the municipality pursuant to N.J.S.A. 46:10B-51 register the residential or commercial property with the Borough's Property Registration Program as a property in foreclosure.
- (b) Registration as a Property in Foreclosure. The Creditor must provide the municipality with:
 - 1. The information pursuant to **§155-8.3(b)**;
 - 2. The date the summons and complaint in an action to foreclose on a mortgage was filed against the subject property, the court in which it was filed, and the docket number of the filing; and
 - 3. Identify whether the property is vacant and abandoned in accordance with the definition in **§155-8.1**; and
 - 4. If there is any change in the name, address, or telephone number for a representative, agent, or individual authorized to accept service on behalf of a Creditor required to register pursuant to the Property Registration Program following the filing of the summons and complaint, the Creditor shall update the Property Registration Program within 10 days of the change in that information; and
 - 5. If there is any change in the property's status, update the property registration with Borough's Property Registration Program to reflect the change; and
 - 6. If the Creditor is located out-of-State, the information of an in-State representative or agent to act for the foreclosing Creditor.
- (c) The Creditor filing a summons and complaint in an action to foreclose 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 Property Registration Program.
- (d) A foreclosed property is considered vacant and abandoned if it meets the definition of **§155-8.1**.
- (e) In the case of a violation for failure to provide care, maintenance, security, and upkeep of the exterior of vacant and abandoned property, such 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.

- (f) Fees. The Creditor will pay an annual registration fee of:
1. \$500 per property annually for any property that is required to be registered because a summons and complaint in an action to foreclose was filed by the Creditor.
 2. An additional \$2,000 per property annually if the property is vacant or abandoned when the summons and complaint in an action to foreclose is filed or becomes vacant and abandoned pursuant to the definition in the ordinance at any time thereafter while the property is in foreclosure.
 3. The registration fee shall be due on: January 31st.
- (g) Any fines imposed pursuant to this section shall commence 31 days following receipt of the notice of violation, except if the violation presents an imminent risk to public health and safety, in which case any fines shall commence 11 days following receipt of the notice.
- (h) Penalties for Out-of-State Creditors. An out-of-State Creditor who fails to appoint an in-State representative or agent after the 10th day of the period set forth in N.J.S.A. 46:10B-51 shall be subject to a fine of \$2,500 for each day of the violation.
- (i) 20% of any money collected pursuant to this section shall be utilized by the municipality for code enforcement purposes.

§155-8.6 Provisions Only Applicable to Commercial Properties

- (a) For the purposes of this section only, "Creditor" means a State chartered bank, savings bank, savings and loan association or credit union, any person required to be licensed under the provisions of the "New Jersey Residential Mortgage Lending Act," N.J.S.A. 17:11C-51 through N.J.S.A. 17:11C-89, and any entity acting on behalf of the Creditor named in the debt obligation including, but not limited to, servicers. For purposes of this section, a Creditor shall not include the State, a political subdivision of the State, or a State, county, or local government entity, or their agent or assignee, such as the servicer.
- (b) A Creditor serving a summons and complaint in an action to foreclose on a mortgage on commercial property shall, within 10 days of serving the summons and complaint, notify the Borough Clerk and the Mayor that a summons and complaint in an action to foreclose on a mortgage has been filed against the subject property.
- (c) The notice shall contain the full name, address, and telephone number for the

representative of the Creditor who is responsible for receiving complaints of property maintenance and code violations and the full name and contact information for any person or entity retained by the Creditor or a representative of the Creditor to be responsible for any care, maintenance, security, or upkeep of the property.

- (d) The notice may contain information about more than one property and shall be provided by mail and electronic mail communication.
- (e) The Borough Clerk shall forward a copy of the notice to the Enforcement Officer.
- (f) The notice shall also include the street address, lot, and block number of the property.
- (g) If there is any change in the 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 paragraph following the filing of the summons and complaint, the creditor shall provide a notice to the Borough Clerk containing the updated name, address, or telephone number within 10 days of the change in that information.
- (h) If the owner of a commercial property vacates or abandons any property on which a foreclosure proceeding has been initiated or if a commercial property becomes vacant 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 exterior of the property is found to be a nuisance or in violation of any applicable State or local code, the Code Enforcement official shall notify the Creditor or the representative or agent.
- (i) The Borough shall include a description of the conditions that gave rise to the violation with the notice of violation and shall provide a period of not less than 30 days from the Creditor's receipt of the notice for the Creditor to remedy the violation.
- (j) If the Creditor fails to remedy the violation within that time period, the Borough may impose penalties allowed for the violation of municipal ordinances.
- (k) 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 the provisions of subsection (h) of 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 have against the title owner of the

property, including but not limited to the recourse provided under N.J.S.A. 55:19-100.

§155-8.7 Penalties and Fees

- (a) A Responsible Party that violates any provision of this section or any ordinance adopted pursuant hereto, shall be liable to a penalty of not less than \$500 and not more than \$1,000; which penalty may continue to be imposed and collected.
- (b) Each day that a violation continues shall constitute an additional, separate, and distinct offense.

SECTION 2. Section 155-11 shall be repealed in its entirety.

SECTION 3. All ordinances of the Borough of Mendham that are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

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Introduced: August 22, 2022
Public Hearing: September 14, 2022

CERTIFICATION

I HEREBY CERTIFY the foregoing to be a true copy of an Ordinance introduced by the Council of the Borough of Mendham at a duly noticed regular meeting held on August 22, 2022.

// Carolyn Budd //

Carolynn Budd, RMC, CMR
Borough Clerk