

ORDINANCE NO. 2015-12

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMER, COUNTY OF SALEM, STATE OF NEW JERSEY CREATING A NEW CHAPTER 9 OF THE CODE OF THE BOROUGH OF ELMER ENTITLED "VACANT AND ABANDONED PROPERTIES"

WHEREAS, there exists within the Borough of Elmer structures that are vacant and/or abandoned; and

WHEREAS, in many cases the owners or other responsible parties of these structures (lenders and/or lien holders) are neglectful of them, and are failing to maintain them or secure them to adequate standards, or restore them to productive use; and

WHEREAS, many of these structures are in violation of State and/or local fire, housing and property maintenance codes; and

WHEREAS, it has been established that vacant and/or abandoned structures cause severe harm to the public health, safety and general welfare of the community, including diminution of neighboring property values, loss of property tax revenues, accumulation of trash and debris, overgrowth of grass, weeds, and other vegetation that is inhabited by insects and rodents, increased risk of fire, and potential increases in criminal activity and public health risk; and

WHEREAS, the resident taxpayers of the Borough of Elmer incur unnecessary and disproportionate costs to address the problems caused by vacant structures, including but not limited to police calls, fire calls, public works calls, property inspections and related tasks associated with these calls; and

WHEREAS, the Save New Jersey Homes Act of 2008, N.J.S.A. 46:10B-51, et seq., requires every creditor that has initiated a foreclosure proceeding to provide the Municipal Clerk of the municipality with a listing of all residential properties in the municipality for which the creditor has foreclosure actions pending, and the Municipal Clerk shall forward a copy of said Notice to the enforcement officer who shall be responsible for administration of any property maintenance or public nuisance code; and

WHEREAS, it is in the public's interest for the Borough of Elmer to establish standards of accountability on the owners or other responsible parties (to include lenders and/or lien holders) of vacant structures in order to protect the health, safety and general welfare of the residents of the Borough of Elmer; and

WHEREAS, it is further the purpose of this Ordinance to impose a fee in conjunction with the registration of vacant and/or abandoned structures in light of the disproportionate and unnecessary costs imposed on the Borough by the presence of such structures.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Elmer, in the County of Salem and State of New Jersey, and it is hereby enacted and ordained by the authority of same that the Code of the Borough of Elmer is hereby amended, by adoption of this Ordinance, to create a new Chapter 9 of the Code of the Borough of Elmer entitled "Vacant and Abandoned Properties" as set forth below:

VACANT AND ABANDONED PROPERTIES

SECTION 1. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

ABANDONED PROPERTY – pursuant to N.J.S.A. 55:19-81, an abandoned property is defined as follows:

Any property that has not been legally occupied for a period of six months and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the Enforcement Officer that:

- a. The property is in need of rehabilitation in the reasonable judgment of the Enforcement Officer, and no rehabilitation has taken place during that six-month period;

- b. Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least six months as of the date of a determination by the Enforcement Officer pursuant to this section;
- c. At least one installment of property tax remains unpaid and delinquent on that property in accordance with Chapter 4 of Title 54 of the Revised Statutes of the date of the determination by the Enforcement Officer pursuant to this section;
- d. Any building or structure which is not legally occupied or at which all lawful business or construction operations or renovation work or residential occupancy has substantially ceased, and which is in such condition that it cannot legally be reoccupied without repair or rehabilitation, and/or the property has been determined to be a nuisance by the Enforcement Officer in accordance with N.J.S.A. 55:19-82. A property which contains both residential and non-residential space may be considered abandoned pursuant to N.J.S.A. 55:19-78, et seq. so long as two-thirds or more of the total net square footage of the building was previously legally occupied as residential or commercial space and none of the residential or commercial space has been legally occupied for at least six months at the time of the determination of abandonment by the Enforcement Officer and the property meets the criteria of either subsection a. or subsection d. of this section.

CREDITOR - shall mean any Creditor (including out-of-State Creditors) including but not limited to, service companies, lenders in a mortgage agreement and any agent, servant or employee of the mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under a mortgage or mortgage note.

ENFORCEMENT OFFICER – The Borough’s Property Maintenance Officer or Building Inspector.

INITIATION OF THE FORECLOSURE PROCESS - shall mean any of the following actions taken by a lienholder or mortgage holder or mortgagee

- a) taking possession of the property;
- b) delivering a Creditor's or mortgagee's Notice of Intention to Foreclose to the Borrower;
- c) commencing a foreclosure action in the Superior Court of New Jersey or filing a Lis Pendens.

OWNER - shall include the title holder, any agent of the title holder having authority to act with respect to a vacant and/or abandoned property, any foreclosing entity that has filed a notice with the Municipal Clerk pursuant to the provisions of N.J.S.A. 46:10B-51, or any other entity determined by the Borough of Elmer to have authority to act with respect to the property.

VACANT PROPERTY - shall mean any building or structure which is not legally occupied or at which all lawful business or construction operations or renovation work or occupancy have substantially ceased, and which is in such condition that it cannot legally be re-occupied without repair or rehabilitation, including but not limited to any property meeting the definition of abandoned property in N.J.S.A. 55:19-81 or any two (2) of the conditions defined in N.J.S.A. 2A:50-73 exist; provided, however, that any property where all building systems are in working order, where the building and grounds are maintained in good order, or where the building is in a habitable condition, and where the building is being actively marketed by its owner or Creditor for sale or rental, shall not be deemed a vacant property for purposes of this Ordinance.

SECTION 2. Registration Requirements.

The owner and/or Creditor of any abandoned or vacant property as defined herein shall:

- 1. Within 30 calendar days after the building becomes vacant property or
- 2. Within 30 calendar days after assuming ownership of the vacant property, whichever is later; or
- 3. Within 30 calendar days of receipt of notice by the municipality, file a registration statement for such vacant property with the Code Enforcement Office on forms provided by the Borough for such purposes in

the manner set forth below. Failure to receive notice by the municipality shall not constitute grounds for failing to register the property.

- a. Each property having a separate block and lot number as designated in official records of the municipality shall be registered separately.
- b. The registration statement shall include the name, street address, telephone number, and e-mail address of a person 21 years of age or older, designated by the owner or Creditor or owners or Creditors 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 or owners or Creditors in connection with the enforcement of any applicable code; and the name, street address, telephone number, and e-mail address of the firm and the actual name(s) of the firm's individual principal(s) responsible for maintaining the property. The individual or a representative of the firm responsible for maintaining the property shall be available by telephone or in person on a 24-hour per day, seven-day per week basis. The two entities may be the same or different persons. Both entities shown on the statement must maintain offices in the State of New Jersey or reside within the State of New Jersey.
- c. The registration shall remain valid for one year from the date of registration, except the initial registration, for the fee prescribed in SECTION 8 for each vacant property registered.
- d. If the registration fee is not paid within thirty (30) days of notification, a lien will be placed on the property for the amount prescribed in SECTION 8.
- e. The owner or Creditor shall notify the Enforcement Officer within thirty (30) calendar days of any change in the registration information by filing an amended registration statement on a form provided by the Borough for such purpose.
- f. 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, owners or Creditor of the building.
- g. The owner and/or Creditor shall maintain insurance in accordance with SECTION 6(e.) below.
- h. The registration statement may include any additional information that the Enforcement Officer may reasonably require.
- i. If after thirty (30) calendar days, there is no progress taken to address the code violations at the vacant property; taxes are unpaid for one (1) quarter and the water and sewer charges, if applicable, are also delinquent for one (1) quarter, the Borough may commence condemnation proceedings to either demolish the structure and or take title to the property to satisfy the Borough's liens and expenses.

SECTION 3. Restoration of Vacant Property.

Any owner of vacant property who plans to restore the property to productive use and occupancy during the thirty (30) day period following the date of the initial registration of the property shall file a sufficiently detailed statement of the owner's plans for restoration of the property with the registration statement along with a timeline schedule. Any owner who within the initial registration period completes restoration of the property whereby the property no longer is defined as a vacant property may request a 50% refund of the vacant property registration fee from the Code Enforcement Office upon presentation of a Certificate of Occupancy who shall forward the request to the Enforcement Officer for approval.

SECTION 4. Access to Vacant Properties.

The owner and/or Creditor of any vacant property registered under this Chapter shall provide access to the Borough to conduct exterior and interior inspections of the building to determine compliance with municipal codes, upon reasonable notice to the property owner or Creditor or the designated agent. Such inspections shall be carried out on weekdays during the hours of 9:00 a.m. and 4:00 p.m., or such other time as may be mutually agreed upon between the owner or Creditor and the Borough.

SECTION 5. Responsible Owner or Creditor or Agent.

- a. An owner or Creditor who meets the requirements of this Chapter with respect to the location of his or her residence or workplace in the State of New Jersey may designate him or herself as agent or as the individual responsible for maintaining the property.
- b. By designating an authorized agent under the provisions of this section the owner or Creditor consents to receive 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 building by service of the notice or process on the authorized agent. Any owner or Creditor 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 or Creditor notifies the Borough of Elmer in writing of a change of authorized agent or until the owner or Creditor files a new annual registration statement.
- c. Any owner or Creditor who fails to register a vacant property under the provisions of this Chapter shall further be deemed to consent to receive, by posting on the building, in plain view, and by service notice at the last known address of the owner or Creditor of the property on record with the Borough of Elmer by regular and certified mail, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building and subject to the provisions stated in SECTION 2, 3(i).

SECTION 6. Vacant Property Owner or Creditor Requirements.

The owner or Creditor of any structure that has become vacant and/or abandoned property, and any person responsible for maintaining any such building that has become vacant and/or abandoned shall, within thirty (30) calendar days of the structure becoming vacant and/or abandoned, or within thirty (30) calendar days of the owner or Creditor taking title to the property, do the following:

- a. Board and secure the structure and all unattached accessory structures, garages or similar structures as provided for in the applicable codes of the Borough of Elmer or as set forth in rules and regulations promulgated by the Construction and/or Housing Code Official.
- b. Ensure that the exterior grounds of the structure, including yards, fences, sidewalks, walkways, right-of-ways, alleys, retaining walls, attached or unattached accessory structures and driveways, are well-maintained and free from trash, debris, loose litter, and grass and weed overgrowth, and in compliance with Chapters 10 and 11 of the Code of the Borough of Elmer.
- c. Post a sign affixed and protected from the elements, to the structure indicating the name, address and telephone number of the owner or Creditor and the owner's or Creditor's authorized agent for the purpose of service of process, and the name, address and telephone number of the entity responsible for maintenance of the property, which may be the same as the owner or Creditor or authorized agent. The sign shall include the words "No Trespassing" and "to report problems with this building, call...", shall be 24" x 24" in size, and shall be placed in a location where it is clearly visible from the nearest public street or sidewalk, whichever is nearer. The sign shall meet the requirements of the Borough of Elmer's Land Development Regulations, Chapter 25.
- d. Continue to maintain the structure in a secure and closed condition, keep the grounds in a clean and well-maintained condition, and ensure that the sign is visible and intact until the building is again occupied, demolished, or until repair and/or rehabilitation of the building is complete.
- e. The owner or Creditor of any vacant and/or abandoned property shall acquire and otherwise maintain liability insurance, in an amount of not less than \$300,000.00 for buildings designed primarily for residential use, and not less than \$1,000,000.00 for any other building, including, but not limited to, buildings designed for manufacturing, industrial, storage or commercial uses, covering any damage to any person or any property caused by any physical condition of or in the building or property subject to the provisions of the ordinance. Said insurance shall provide a rider for payment of all demolition costs should the vacant building become abandoned and require the Borough of Elmer to demolish the building. Any insurance policy acquired or renewed after the building has become vacant shall provide for written notice

to the Borough of Elmer Enforcement Officer within thirty (30) calendar days of any lapse, cancellation or change in coverage. The owner or Creditor shall attach evidence of the insurance to the owner's or Creditor's registration statement. Any registration statement submitted that does not include such evidence shall be deemed to be an invalid registration. Insurance must name Borough of Elmer as party or payee for demolition costs should the Borough deem demolition is required.

- f. Correct any violation of this Chapter, including but not limited to the provision of care, maintenance, security and upkeep of the exterior of the property, within thirty (30) days of receipt of the violation notice from the enforcement officer; or within ten (10) days of receipt of the violation notice if the violation presents an eminent threat to public health and safety. The issuance of a notice pursuant to this Chapter shall constitute proof that a property is "vacant and abandoned" for the purposes of N.J.S.A. 2A:50-73.

SECTION 7. Enforcement Officer Issued Rules and Regulations

The Enforcement Officer may issue rules and regulations for the administration of the provisions of this Ordinance. Such administratively promulgated rules and regulations shall be in writing and shall be provided to the owners or Creditor of properties registered under this Chapter or their designated agents within thirty (30) calendar days of their effective date.

SECTION 8. Fees.

The registration fee for each building shall be as follows:

- Initial registration fee: \$500.00.
- If not paid within six (6) months of notification by the Borough of Elmer, the registration fee shall increase to \$1,000.00.

The renewal fee for each building shall be as follows:

- First Renewal fee: \$1,000.00.
- Second and subsequent Renewal Fee: \$2,000.00.

SECTION 9. Violations and Penalties.

- a. Any owner or In-State Creditor who violates any provision of this Chapter or of the rules and regulations issued hereunder shall be subject to a fine of \$1,500.00 for each offense. Every day that a violation continues shall constitute a separate and distinct offense. Fines assessed under this Chapter shall be recoverable from the owner or Creditor and shall be a lien on the property as described in N.J.S.A. 55:19-100.
- b. Any out-of-state Creditor who violates any provision of this Chapter or of the Rules and Regulations issued hereunder shall be subject to a fine of \$2,500.00 for each day a separate violation of this Chapter exists. Fines assessed under this Chapter shall be recoverable from the owner or Creditor and shall be a lien on the property as described in N.J.S.A. 55:19-100.

Section 2.

Repealer.

All prior Ordinances or parts of Ordinances inconsistent with this Ordinance be and the same are hereby repealed to the extent of such inconsistencies.

Section 3.

Severability.

Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 4.

When effective.

This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

BOROUGH OF ELMER

BY: _____
Joseph Stemberger, Mayor

ATTEST:

Beverly S. Richards
Borough Clerk

ROLL CALL VOTE as follows:

	<u>MOTION</u>	<u>SECOND</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Schneider	—	—	—	—	—	—
Davis	—	—	—	—	—	—
Nolan	—	—	—	—	—	—
Richards	—	—	—	—	—	—
Schalick	—	—	—	—	—	—
Zee	—	—	—	—	—	—

NOTICE

The Ordinance published herein was introduced and passed upon first reading at a meeting of the Mayor and Council of the Borough of Elmer, in the County of Salem and State of New Jersey, held on June 10, 2015. It will be further considered for final passage, after public hearing hereon, at a meeting of said Mayor and Council to be held in the Borough Hall, 120 South Main Street, Elmer, New Jersey 08318, on July 8, 2015 at 7:30 P.M. During the week prior and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's office at Borough Hall, 120 South Main Street, in the Borough, to the members of the general public who shall request the same.

Beverly S. Richards
Borough Clerk

NOTICE OF ADOPTION

**OF
ORDINANCE NO. 2015-12**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMER, COUNTY OF
SALEM, STATE OF NEW JERSEY CREATING A NEW CHAPTER 9
OF THE CODE OF THE BOROUGH OF ELMER ENTITLED
“VACANT AND ABANDONED PROPERTIES”**

The foregoing named Ordinance was duly adopted at a regular meeting of the Mayor and Borough Council of the Borough of Elmer on July 8, 2015.

Beverly S. Richards, Clerk
Borough of Elmer