

## **TOWN OF WATERFORD**

### **LOCAL LAW NO.1 OF THE YEAR 2021 A LOCAL LAW ESTABLISHING A REGISTRY FOR VACANT BUILDINGS**

#### **§ 1. Title.**

This local law shall be referred to as “A Local Law Establishing a Registry for Vacant Buildings and Property Maintenance Requirements for Lots Containing a Vacant Building.

#### **§ 2. Purpose and intent.**

It is the finding of the Town Board that buildings which remain vacant and are not properly secured and maintained are unsightly, unsafe and have a negative effect on the surrounding community. Unfortunately, many buildings, once vacant, remain that way for years. The purpose of this local law is to establish a program for identifying and registering vacant and abandoned buildings, and to establish certain property maintenance requirements for lots containing vacant buildings to promote the health, safety, and welfare of the community.

The provisions of this article are applicable to the owners and mortgagees of such vacant or abandoned buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter, the health and sanitation code, and any other applicable provisions of the Town of Waterford Code.

#### **§ 3. Definitions and applicability.**

A. Definitions. For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them as follows.

##### **(1) BOARDED**

A building or structure subject to the provisions of this article shall be deemed to be boarded if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window, which has remained in place for a period greater than sixty (60) days.

##### **(2) BRUSH**

Uncultivated woody shrubs and immature trees.

##### **(3) CODE ENFORCEMENT OFFICER**

The duly authorized Town of Waterford Code Enforcement Officer, or designated persons from that office.

**(4) EMERGENCY SITUATION**

Where the condition of a building, structure or any part thereof is an imminent, immediate and substantial danger to the health or safety of occupant, emergency responders and/or the general public. Such conditions include, but are not limited to, fire hazards, falling or dilapidated buildings, structures or any part thereof, loss of significant water, heat, ventilation or a lack of sanitary conditions.

**(5) OCCUPIED**

Any building or structure shall be deemed to be occupied if one or more persons is actively conducting lawful business or resides in all or any part of the building as the licensed business occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this article, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the United States Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; or the most recent, federal or state income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy.

**(6) OPEN**

A building or structure subject to the provisions of this article shall be deemed to be open if any one or more exterior doors other than a storm door is broken, open and/or closed but without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion or any combination of the same.

**(7) OWNER**

An owner or the fee holder of the premises or any lesser estate therein, a mortgagee, a vendee-in possessions, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this article, and as set forth below.

**(8) VACANT**

A building or structure shall be deemed to be vacant if no person or persons actively conducts a lawfully licensed business in any part of the building, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupant(s), or tenant(s) on a permanent, non-transient basis.

Evidence of a lack of occupancy may include, but shall not be limited to, one or more of the following conditions:

- (a) Overgrown or dead vegetation;
- (b) Accumulation of newspapers, circulars, flyers or mail;
- (c) Past due utility notices, disconnected utilities or utilities not in use;
- (d) Accumulation of trash, refuse or other debris;
- (d) Absence of window coverings such as curtains, blinds or shutters;
- (e) One or more boarded, missing or broken windows;
- (f) The building is open to casual entry or trespass; and/or
- (g) The building appears structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons.

A building shall not be deemed unoccupied if:

- (a) It is undergoing construction, renovation or rehabilitation that is proceeding diligently to completion;
- (b) It is occupied on a seasonal basis, but otherwise secure; and/or
- (c) It is secure, but it is the subject of a probate action or other estate proceeding, action to quiet title or other ownership dispute.

B. Applicability. This this article shall be applicable to each owner and mortgagee of any building that is not a dwelling that shall have been vacant for more than thirty-five (35) consecutive days and to each owner and mortgagee of residential property consisting of one or more vacant dwellings that shall have been vacant for more than thirty-five (35) consecutive days.

#### **§ 4. Registration.**

A. Owner. Every owner of real property located within the Town that is abandoned or vacant as those terms are defined herein shall register the property with the Town Code Enforcement Officer or his or her designee on forms provided by the Town and shall pay the fees as required by this article. A separate registration is required for each vacant property.

B. Mortgagee. Any mortgagee who holds a mortgage on real property located within the Town of Waterford shall upon default by the mortgagor and prior to the issuance of a notice of default or the filing of a lis pendens with the County Clerk, whichever is earlier, perform an inspection for the mortgaged property. If the property is found to be vacant or shows evidence of vacancy as defined herein, it shall be deemed abandoned/vacant real property and the mortgagee shall within ten (10) days of the inspection register the property with the Town Code Enforcement or his or

her designee on forms provided by the Town and shall pay the fees as required by this article. A registration is required for each vacant property. If the property is occupied but the mortgage on the property remains in default, the property shall be inspected by the mortgagee or his or her designee monthly until:

(1) The mortgagor or other party remedies the default; or

(2) It is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned/vacant and the mortgagee shall within ten (10) days of that inspection register the property with the Code Enforcement Officer or his or her designee on forms provided by the Town and shall pay the fees as required by this article.

#### **§ 5. Form of Registration.**

Each such owner and mortgagee shall cause to be filed a notarized registration statement, which shall include the street address and Tax Map parcel number of each such vacant building, the names and addresses of all owners, and any other information deemed necessary by the Code Enforcement Officer or his or her designee. For purposes of this section, the following shall also be applicable:

A. If the owner is a corporation, the registration statement shall provide the name and business and residence address, together with the work, home and cell phone telephone numbers and e-mail address of a responsible officer of the corporation that will allow the Town to contact the responsible officer on a twenty-four hour basis;

B. If an estate, the name and business and residence address of the executor of the estate and the work, home and cell phone telephone numbers and e-mail address of the executor;

C. If a trust, the name and business and residence address of all trustees, grantors, and beneficiaries and the work, home, and cell phone telephone numbers and e-mail addresses of all of the trustees and beneficiaries;

D. If a partnership or limited liability company, the names and residence and business addresses of all partners or members with an interest of 10% or greater and the work, home and cell phone telephone numbers and e-mail addresses of all such business partners;

E. If any other form of unincorporated association including home owner associations, the names and residence and business addresses of all principals or members or managers with

representative authority or similar entity and the work, home and cell phone telephone numbers and e-mail addresses of all such principals or members or managers;

F. If an individual person, the name and residence address of that individual person and the work, home and cell phone telephone numbers and e-mail address of such person.

#### **§ 6. Registration statement and fees; local agent.**

If none of the persons listed above is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within 50 miles of Town Hall in the Town of Waterford, State of New York, and who is authorized to accept service of process on behalf of the owners or mortgagees and who has been designated as responsible, local party or agent, both for the purposes of notification in the event of an emergency affecting the public health, safety or welfare and for the purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant or abandoned buildings, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for thirty-five (35) consecutive days or more. In no instance shall the registration fees be construed to relieve or otherwise exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement must be filed for each vacant building of the owner or mortgagee so registering and separate fee paid therefor. The owner or mortgagee of the vacant or abandoned real property as of the yearly anniversary date of the initial registration filing shall be responsible for the payment of the nonrefundable registration fee. Said fee shall be established by separate Town Board resolution and shall be paid to the Town Clerk and shall be based on the duration of the vacancy as determined by said separate Town Board resolution.

#### **§ 7. Appeal rights.**

The owner or mortgagee shall have the right to appeal the imposition of registration fees to the Town Board, upon filing a written application of appeal on a form to be provided by the Town with the applicable nonrefundable appeal filing fee of \$150. The written appeal application must be filed in the office of the Town Clerk no later than thirty (30) calendar days from the date of payment of the registration fee. On appeal, the owner shall bear the burden of proof by clear and convincing evidence of occupancy, as defined herein.

#### **§ 8. Delinquent registration; collection.**

After the owner or mortgagee is given notice of the amount of the registration fee due and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the Town and the Town may in addition to its provisions for costs and expenses set forth herein, commence

a civil action to collect such unpaid debt. Together with the costs and attorney's fees related to such collection.

**§ 9. Delinquent registration fees as lien.**

After the owner or mortgagee is given notice of the amount of the registration fee due, and the owner fails to pay the amount due, said amount so assessed shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town taxes and charges.

**§ 10. Duty to amend registration statement.**

If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, mortgagee, responsible party or agent for the same to contact the head of the Town Code Enforcement Department within thirty (30) days of the occurrence of such changes and advise the Code Enforcement Department in writing of those changes.

**§ 11. Exceptions.**

This article shall not apply to any building owned by the United States, the state, the county, the Town nor to any of their respective agencies or political subdivision.

A building which has suffered fire damage or damage caused by extreme weather conditions shall be exempt from the registration requirement for a period of ninety (90) days after the date of the fire or extreme weather event if the property owner submits a request for exemption in writing to the Code Enforcement Officer. This request shall include the following information supplied by the owner:

- A. A description of the premises;
- B. The names and addresses of the owner or owners;
- C. A statement of intent to repair and reoccupy the building in an expedient manner, or the intent to demolish the building.

**§ 12. Registry Exempt from Disclosure.**

Under New York State Public Officers Law § 87, the vacant property registry (as established by this Local Law) and all vacant property registration forms shall be exempt from disclosure under the Freedom of Information Law on the grounds that such disclosure would constitute an unwarranted invasion of personal privacy. The Town Clerk shall institute strict policies to ensure

that such information is available only to Town personnel engaged in the enforcement of the provisions of this Local Law and, in emergency situations, to members of law enforcement, the fire service, emergency medical services, and public utility companies.

**§ 13. Failure to register; penalties for offenses.**

A. Penalties. The failure or refusal for any reason of any owners, mortgagee, responsible person or agent of an owner acting on behalf of the owner, to register a vacant building or to pay any fees required to be paid pursuant to the provisions of this article, within thirty (30) days after they become due, shall constitute a violation, punishable upon conviction thereof by a fine in the amount of not less than \$500 nor more than \$1,500 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building registry fee, as applicable; however, the minimum mandatory fine for a violation of this article shall not be less than double the amount of the registration fee due and owing. There shall be no unconditional discharges or suspended sentences upon a finding of a violation of this article.

B. Discontinuance of water service. Failure to register a vacant or abandoned building within 30 days of the request for registration, the Town Board may, and in its sole option, proceed to either terminate water service and/or remove the water meter from the subject premises.

**§ 14. Conflict with other provisions.**

This article is intended to be used in conjunction with existing laws, and nothing in this article shall be construed as rendering other applicable laws invalid. Where no law exists or where existing laws are silent in any area where this article sets forth specific pros, the provisions of this article shall apply. In any situation where a conflict exists between a provision of this article and any existing law, the more restrictive requirement shall prevail, unless otherwise specified.

**§ 15. Abandoned/vacant building registration fee schedule.**

A. A fee schedule shall be established by the Town Board and shall be based on the size of the building. Vacant building fees for buildings of 5000 s.f. or greater shall be doubled. The owner of a vacant building shall pay an initial registration fee to the Town Clerk that will be prorated depending upon the date the registration occurred. If the building remains vacant for the remainder of the year, then on the next January 1<sup>st</sup>, an annual registration fee will be due and payable within ten (10) days. The fee will continue as long as the building remains vacant and it will increase annually depending upon the length of vacancy.

B. All fees specified in this article are nonrefundable and are not cumulative.

**§ 16. Property Maintenance Requirements for Lots Containing Vacant Building(s)Registry**

**A. Duty to Keep Properties Containing a Vacant Building Free of Brush, Grass and Weeds and Town's Authority to Remove.**

(1) The owner of any lot containing a vacant building located in the Town of Waterford shall cut, trim or remove brush, grass or weeds upon said property. Specifically, brush, grass or weeds shall not be permitted to grow to a length of ten (10) or more inches within fifty (50) feet of a public road (whether a road by dedication or use), or within fifty (50) feet of any vacant building or other structure located upon such lot. The requirement to cut, trim or remove brush, grass or weeds shall include all dead, damaged or diseased trees or shrubs which present any hazard to life or property, but shall not otherwise include:

- (a) Mature trees;
- (b) Cultivated shrubs; and/or
- (c) Brush growing in areas of land that is heavily forested.

(2) In the event that the owner of a lot containing a vacant building shall fail to cut, trim or remove brush, grass or weeds from said property as provided herein, the Town shall have the authority, as provided for herein, to enter upon such property and cut, trim or remove said brush, grass or weeds. The cost and expense of such action shall be assessed against the property and a lien established in the manner provided hereinbelow.

**B. Notice to Maintain Property.**

(1) If the Code Enforcement Officer shall find brush, grass or weeds upon property containing a vacant building located in the Town of Waterford in excess of the height restrictions listed above, the Code Enforcement Officer may make an order, directing notice to be served upon the owner of said property as shown by the records of the Office of the Assessor of the Town.

(2) The notice shall contain a general description of the property containing a vacant building, a statement of the particulars with regards to the condition of the property and an order requiring the cutting, trimming or removal of brush, grass or weeds. The Notice shall specify a time, not less than ten (10) days after the service thereof, within which the owner served with such Notice must complete the cutting, trimming or removal of brush, grass or weeds from the property as specified in the notice. The Notice shall state that, in the event that the condition on the property is not eliminated within the time specified in the Notice, the Town shall undertake to enter the property to cut, trim or remove brush, grass or weeds and assess the cost of same against the property.



(3) The Notice may be served either personally or by regular and certified mail, addressed to the property containing a vacant building where the brush, grass or weeds are located as shown by the records of the Assessor of the Town. Service of the Notice by mail shall be deemed completed on the day on which the mailing will have been accomplished.

C. Failure to Comply with Maintenance Notice. Upon failure of the owner of the property containing a vacant building to comply with the Notice within the time provided therein, the Code Enforcement Officer, or other such official of the Town as may be designated by the Code Enforcement Officer, shall provide such labor and materials as are necessary for cutting, trimming or removal of brush, grass or weeds and shall cause such work to be performed to complete the cutting, trimming and removal of such brush, grass or weeds from the property. The Town shall keep records of the cost of such work.

D. Billing Notice. Should the cutting, trimming and removal of brush, grass or weeds from the property be performed by the Town or the Town's contractor, the Town shall serve a billing notice on the owner of such property, as identified on the Town's most recent assessment roll, setting forth the cost of such work together with an additional administrative fee of \$100 for costs of inspection and other incidental costs associated with abating the condition, to be added to the total costs of the work.

E. Assessment of Costs and Expenses. Should the owner of the property containing a vacant building fail to comply with the billing notice within the time provided therein, all costs and expenses incurred by the Town in connection with the cutting, trimming and removal of brush, grass or weeds from the property, plus an administrative fee of \$100, shall be assessed against the land on which said brush, grass or weeds were located. An itemization of costs shall be provided to the Town Board by the Code Enforcement Officer. The total costs and expenses shall then be determined by the Town Board, plus an administrative fee of \$100, and shall be reported by the Town Board to the Assessor of the Town as an amount to be liened and assessed against the property, and the expense so assessed shall constitute a lien and charge on the property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and subject to the same rules, penalties and charges as apply to the collection of real property taxes of the Town. That portion of said collected funds which shall represent costs and expenses incurred by any department of the Town with regard to alleviating the condition shall be returned to that department's operational budget.

F. Property Maintenance Requirement Not Exclusive. The property maintenance requirements set forth in this Local Law are in addition to all other property maintenance requirements

imposed by any other State or local law, code, rule or regulation, and shall not be deemed to replace or amend any such other law, code, rule or regulation be in lieu thereof.

**§ 17. Penalties for Offenses.**

A. A violation of any provision of this Local Law shall be an offense punishable by a fine not to exceed \$1000 and an imprisonment for a term not to exceed fifteen (15) days, or both. For purposes of this Local Law, each week's continued existence of a violation shall constitute a separate violation. For purposes of the preceding sentence, a "week" shall constitute any period of seven consecutive days.

B. The Code Enforcement Officer or a representative designated by the Code Enforcement Officer, as the case may be, is hereby authorized to issue appearance tickets pursuant to the Criminal Procedure Law in the enforcement of this Local Law.

C. No remedy or penalty specified in this section shall be the exclusive remedy available to address any violation of this Local Law, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, any other remedies or penalties otherwise available under applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in any other applicable law.

**§ 18. Applicability in Relation to Section 1308 and 1310 of the New York Real Property Actions and Proceedings Law.**

This Local Law shall not apply to impose duties, liabilities or obligations upon any state or federally chartered bank, savings bank, savings and loan association or credit union (collectively referred to in this section as a "lending institution") which is covered by preemptions of local regulations stated within Sections 1308 and 1310 of the New York Real Property Actions and Proceedings Law. However, the provisions of this Local Law shall apply to such lending institutions to the extent not expressly preempted by Sections 1308 and 1310 of the Real Property Actions and Proceeding Law. This Local Law shall be reconcile with, and applied consistent with, Sections 1308, 1309 and 1310 of the Real property Actions and Proceedings Law to the fullest extent possible, including, but not limited to, the cumulative exercise of rights and remedies by the Town against lending institutions to the extent allowed by those statutory sections, and this Local Law shall not be viewed as, or deemed to be, an election of remedies in lieu of rights afforded to the Town under those statutory sections.

**§ 19. Severability.**

If any clause, phrase, sentence, paragraph, section, or part of this Local Law is adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Local Law, but shall instead be confined in its operation to the clause, phrase, sentence, paragraph, section, or part directly involved in the controversy in which such judgment shall have been rendered.

**§ 20. Effective Date**

This Local Law shall take effect upon its filing with the Secretary of State.