

CHAPTER 158: VACANT BUILDINGS

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§ 158.01 INTENT

It is in the intent of this Chapter to protect the public health, safety, and welfare by establishing a registration process for vacant buildings and requiring responsible parties to implement a maintenance plan for such buildings to remedy any public nuisance, prevent deterioration, unsightly blight and consequent adverse impact on the value of nearby property.

This Chapter shall not be construed to prevent the enforcement of other applicable laws, ordinances, codes and regulations which prescribe standards other than are provided herein, and in the event of conflict, the most restrictive shall apply.

This Chapter shall be construed liberally and justly to effect its purposes.

§ 158.02 DECLARATION OF POLICY

The purpose of this Chapter is to protect the public health, safety and welfare of the residents of the Village by:

- (1) Establishing a program for the identification, registration and regulation of buildings which are or become vacant on and after the effective date of this Chapter.
- (2) Determining the responsibilities of owners of vacant buildings.
- (3) Providing for the administration, enforcement, including abatement of public nuisances and imposition of penalties.

§ 158.03 DEFINITIONS

For the purpose of this Chapter, and the interpretation and application thereof, the following terms, phrases, words and their derivations shall have the meanings given herein, unless the context in which they are used shall indicate otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number and words in the plural number include the singular number. Words or phrases not defined shall be given their common and ordinary meaning unless the context clearly indicates or requires a different meaning.

Building shall mean any structure occupied or intended for supporting or sheltering any occupancy or activity.

Building Official shall mean the Village's Building Official, as designated by the Village President with the advice and consent of the Board of Trustees, or the designee of such Building Official.

Corporate Authorities shall mean the President and Board of Trustees of the Village of Port Barrington.

Owner shall mean any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county, city or village as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court; or any such entity or designated agent owning, maintaining, operating or collecting rent for any building.

Person shall mean a corporation, a partnership, or other entity as well as an individual.

Premises shall mean a lot, plot or parcel of land including any structure thereon.

Public nuisance shall mean and includes the following:

- (1) The physical condition, or uses of any building regarded as a public nuisance at common law, under the Illinois Compiled Statutes, or under this Village Code;
- (2) Any physical condition, use or occupancy or any building or its appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, and unsafe fences or structures;
- (3) Any building which has unsanitary sewerage or plumbing facilities;
- (4) Any building designated by the Building Official as unsafe for human habitation or use;
- (5) Any building which is manifestly capable of being a fire hazard, or manifestly unsafe or insecure as to endanger life, limb or property;
- (6) Any building which is unsanitary, or which is littered with rubbish or garbage, or which has an uncontrolled growth of weeds;
- (7) Any building that is dangerous, in a state of dilapidation, deterioration or decay; faulty construction; open or vacant doors or windows, or other openings are boarded up or secured, by any means other than conventional methods used in design of the building or permitted for new construction of similar type; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and dangerous to anyone on or near the premises; or
- (8) Any building defined or determined as dangerous or unsafe by any section of this Village Code.

Vacant building shall mean a building or portion thereof which lacks the regular presence of human beings who have a legal right to be on the premises, or at which substantially all lawful business or construction operations or residential occupancy has ceased or which is substantially devoid of content, including buildings ordered vacated by the Corporate Authorities of the Village pursuant to authority granted by this Village Code, state law or a court of competent jurisdiction. In determining whether a building is "vacant," the Building Official may consider these factors, among others:

- (1) A building at which substantially all lawful residential or business activity has ceased, or the building is unoccupied and secured by boarding, or other similar means, or is unoccupied and unsecured;
- (2) The percentage of the overall square footage of occupied to unoccupied space or the overall number of occupied or unoccupied units shall be considered.
- (3) The building is substantially devoid of contents. The condition and value of fixtures or personal property in the building are relevant to this determination.
- (4) The building lacks utility services, i.e., water, sewer, electric or natural gas.
- (5) The building is the subject of a foreclosure action.
- (6) The building is not actively for sale as part of a contractual agreement to sell the building, the building lacks "for sale", "for rent" or similar signage.
- (7) The building is unoccupied and the presence or recurrence of uncorrected code violations exist;
- (8) The building is unoccupied and has been the site of unlawful activity within the previous six (6) months;
- (9) The building is unlawfully occupied; or
- (10) The building is unoccupied and during such time the Corporate Authorities of the Village have issued an order to correct a public nuisance condition and said condition has not been corrected in a code-compliant manner.

But not including:

- (1) Vacant buildings which are undergoing construction, renovation, or rehabilitation and which are in compliance with all applicable ordinances, codes, legislation and regulations, and for which construction, renovation or rehabilitation is proceeding diligently to completion.

Village shall mean the Village of Port Barrington, Lake and McHenry Counties, Illinois.

Village Code shall mean the Port Barrington Code of Ordinances, as amended from time to time ("this Village Code").

Village President shall mean the Village President of the Village of Port Barrington, or his or her designee.

§ 158.04 VACANT BUILDING DETERMINATION; NOTICE

The Building Official shall evaluate all buildings in the Village that the Building Official believes to be unoccupied and make a determination for each as to whether the building is a vacant building within the meaning of Section 158.03. The Building Official may determine that a building which meets any of the criteria set forth in Section 158.03 is not to be regulated under this Chapter for a stated period, if consideration of the building under this Chapter would not serve the public health, welfare and safety and makes written finding in support of the decision that state the factual basis for the determination.

For buildings the Building Official determines to be vacant buildings, the Building Official shall, within thirty (30) days of making that determination, send notice of such to the last taxpayer of record listed on the most recent county tax records as practical and available to the Village requesting the registration of the building and submission of a vacant building plan with the Building Official. In the event any public nuisance exists in connection with the building or premises thereto then the Building Official shall specify in the notice the existence of such nuisances. Said notice of determination shall be sent first-class United States Mail, with proper postage prepaid. Failure of delivery shall not excuse a person from complying with this Chapter. The Building Official may personally serve or cause personal service of the notice of determination. Any person making such service shall execute an affidavit attesting to the facts of service. The Building Official shall maintain an affidavit of such mailing for each notice of determination sent.

The notice shall contain a statement of the obligations of the owner of a building determined to be a vacant building, a copy of the registration from the owner is required to file pursuant to this Chapter and a notice of the owner's right to appeal the Building Official's determination.

§ 158.05 APPEAL OF DETERMINATION OF VACANT BUILDING

- (a) An owner of a building determined by the Building Official to be a vacant building may appeal that determination to the Corporate Authorities of the Village. Such appeal shall be in writing and shall be filed with the Village Clerk within fifteen (15) days of the date of mailing of the notice of determination. The filing of an appeal stays the owner's obligation to register the building as required by this Chapter. The appeal shall contain a complete statement of the reasons the owner disputes the Building Official's determination, shall set forth specific facts in support thereof, and shall include all evidence the owner relies upon to support the appeal. The Corporate Authorities of the Village shall decide the appeal on the basis of facts presented by the owner in the written appeal and the Building Official's written determination.
- (b) An owner who wishes to challenge the applicability of this Chapter to their building without the Building Official's determination having been made, shall set forth specific facts to support non-applicability in writing to the Building Official. In the event the Building Official determines that the subject building is a vacant building, the owner shall have the right to appeal the Building Official's determination as provided for in this Section.
- (c) The burden is upon the owner to present sufficient evidence to persuade the Corporate Authorities of the Village that had the evidence been known to the Building Official at the time the Building Official made the determination, the Building Official would more likely than not have determined that the subject building was not a vacant building.
- (d) The Village Clerk shall send written notice of the decision of the Corporate Authorities of the Village to the owner within fifteen (15) days of receipt of the appeal. The Corporate Authorities of the Village may, but are not required to, seek additional information from the owner. The Corporate Authorities of the Village may, upon written notice thereof to the owner, take no more than thirty (30) additional days, to decide the appeal if it is determined that such additional time is required for consideration of the appeal. The decision of the Corporate Authorities of the Village shall be final.

§ 158.06 OBLIGATION TO REGISTER VACANT BUILDING

- (a) Except as provided in this Chapter, whenever any building in the Village is vacant or the owner who knows or from all the facts and circumstances should know, that their building is or has become a vacant building, or the owner, which the Building Official determines at any time to be a vacant building, or the owner whose appeal from the Building Official's determination has been denied shall register such building as a vacant building and submit a vacant building plan within thirty (30) days after either the date of the Building Official's notice of determination or occurrence

of the facts that would cause a reasonable person to believe that the building was a vacant building, or denial of the appeal by the Corporate Authorities of the Village, whichever is applicable.

- (b) Registration does not exonerate the owner from compliance with all applicable Village Code requirements, including this Chapter, nor does it preclude any of the actions the Village is authorized to take pursuant to this Chapter or elsewhere in this Village Code. Registration shall be deemed as prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the Village against the owner of a building.

§ 158.07 REGISTRATION OF VACANT BUILDING; ANNUAL FEE

Any owner registering a vacant building shall supply the following information on such form provided by the Village.

The form shall set forth, but not be limited to, the following information:

- (1) Name, address, and telephone number of owner, a post office box address is not an acceptable address.
- (2) Name, address, and telephone number of any local agent or representative, a post office box address is not an acceptable address.
- (3) Name, address and telephone number of all persons with any legal interest in the property, building, and premises, a post office box address is not an acceptable address.
- (4) Legal description and permanent index number of the premises on which the building is situated.
- (5) The common address of the building.
- (6) Date on which building became vacant.
- (7) Vacant building plan.
- (8) The form shall require the owner to indicate his or her "acceptance of notice" consenting to service of notices sent or required to be sent, pursuant to this Chapter, by any designated local agent or representative. Any owner who fails to register or fails to renew registration or fails to maintain as current with the Building Official the information required regarding the person designated to accept notice and service of process of a vacant building under this Chapter shall be deemed to consent to receive, by posting at the building, any and all notices of violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.
- (9) Obtain property and liability insurance and maintain such insurance for as long as the building is vacant, and file evidence of such insurance with the Building Official.

The vacant building registration shall be filed with the Building Official accompanied with a twenty dollar (\$20.00) annual non-prorated non-refundable filing fee. All eleemosynary, religious, education, government and benevolent property are exempt from the payment of the annual registration fee, but shall otherwise comply with the requirements of this Chapter.

Registration of a vacant building shall be valid for a period of one (1) year. If the building is vacant at the expiration of any registration period, then the owner shall re-register such building and pay such annual filing fee, as herein required.

§ 158.08 VACANT BUILDING PLAN

When a building is registered as required herein, the owner or agent shall submit a vacant building plan. The plan shall contain the following:

- (1) A plan of action to repair any doors, windows, or other openings which are boarded up or otherwise secured by any means other than conventional methods used in the design of the building or permitted for new construction of similar type. Boarding shall be accomplished with materials and methods described by the Village. The proposed repair shall result in openings secured by conventional methods used in the design of the building or by methods permitted for new construction of similar type.
- (2) For buildings and premises thereof which are identified as being or containing public nuisances, then the vacant building plan shall contain a plan of action to remedy such public nuisances.
- (3) For each required plan, a time schedule shall be submitted identifying a date of commencement of repair and date of completion of repair for each improperly secured opening and identified nuisance.
- (4) When the owner proposes to demolish the vacant building, then the owner shall submit a plan and time schedule for such demolition.
- (5) A plan of action to maintain the building and premises thereof in conformance with this Chapter and the Village Code.

§ 158.09 APPROVAL OF VACANT BUILDING PLAN

- (a) The Building Official shall review the proposed vacant building plan in accordance with the standards below. The Building Official shall send notice to the owner of his determination.
- (b) Standards for plan approval. In considering appropriateness of a vacant building plan, the Building Official shall consider the following and shall make written findings in accordance herewith:
 - (1) The purposes of this Chapter and intent of the corporate authorities to minimize the time a building is boarded or otherwise vacant.
 - (2) The effect of the building and the proposed plan on adjoining property.
 - (3) The length of time the building has been vacant.
 - (4) The presence of any public nuisances on the property.
 - (5) The likelihood that the plan or portion(s) thereof will prevent or ameliorate the condition it is designed to address.

§ 158.10 AUTHORITY TO MODIFY VACANT BUILDING PLAN; RIGHT OF APPEAL

The Building Official shall, upon notice to the owner, have the right to modify the vacant building plan by modifying the dates of performance, the proposed methods of action, or by imposing additional requirements consistent with this Chapter, if the Building Official deems necessary to protect the public health, safety, or welfare. If the owner objects to the modifications made by the Building Official, such owner shall have the right of appeal to the Corporate Authorities of the Village for final determination. Such appeal shall be filed with the Village Clerk within fifteen (15) days of the date of mailing of the Building Official's notice of modification. The appeal shall contain a complete statement of the reasons the owner disputes the Building Official's determination, shall set forth specific facts in support thereof, and shall include all evidence the owner relies upon to support the appeal. The Corporate Authorities of the Village shall decide the appeal on the basis of facts presented by the owner in the written appeal and the Building Official's proposed modifications or written determination. The Village Clerk shall send written notice of the decision of the Corporate Authorities of the Village to the owner within fifteen (15) days of receipt of the appeal. The Corporate Authorities of the Village may, upon written notice thereof to the owner, take no more than thirty (30) additional days, to decide the appeal if it is determined that such additional time is required. The decision of the Corporate Authorities of the Village shall be final.

§ 158.11 FAILURE TO COMPLY WITH VACANT BUILDING PLAN

Failure to have an approved plan within thirty (30) days of filing the registration form or failure to comply with the approved plan, at any time, shall constitute a violation of this Chapter subjecting the owner of the building to penalties as provided in this Chapter and to any remedies the Village may avail itself of as provided for herein and elsewhere in this Village Code, including, but limited to, an action to compel correction.

§ 158.12 MAINTENANCE OF ALARM AND SPRINKLER SYSTEMS

Whenever an owner is required to maintain an alarm or sprinkler system, the owner shall continue to maintain said alarm or sprinkler system during all times that a building is vacant. This shall include any and all necessary systems and appurtenances incident thereto to keep said alarm or sprinkler operable, including, but not limited to, source(s) of water, heat and electricity.

§ 158.13 OWNER RESPONSIBILITY TO SECURE VACANT BUILDING

Upon written notice of the Building Official, an owner shall provide bonded, licensed and insured guard service at the vacant building between the hours of 6:00 p.m. and 6:00 a.m. Such service shall remain in place until the Building Official gives written notice to the owner that the service is no longer required. Such service shall be required by the Building Official when the Building Official makes a written determination that the vacant building constitutes a fire hazard, is otherwise dangerous to human life or the public welfare, involves illegal or improper use, occupancy, or maintenance, under such conditions that securing the building are insufficient to prevent the actual or threatened harm.

§ 158.14 OTHER ENFORCEMENT

The registration of a vacant building shall not preclude action by the Village to demolish or to take other action against the building pursuant to other provisions of this Chapter, this Village Code, or other applicable law or ordinance.

§ 158.15 CHANGE OF OWNERSHIP

The vacant building plan shall remain in effect notwithstanding a change in ownership. The new owner is required to file a new registration with the Building Official. The new registration shall be in the same form as the original registration, however, any remaining annual filing fee paid shall be prorated and credited to the new owner for such time remaining on the original registration.

§ 158.16 PROMULGATION OF RULES AND REGULATIONS

The Corporate Authorities of the Village may issue rules and regulations for the administration of this Chapter. These rules may designate materials and methods which must be used to secure a building or premises.

§ 158.17 ENFORCEMENT AND PENALTIES

- (a) Any person found to have violated any provision of this Chapter shall be subject to a minimum fine of two hundred dollars (\$200.00) per day per violation up to a maximum fine of seven hundred fifty dollars (\$750.00) per day per violation, in addition to any other legal or equitable remedies available to the Village. Such other remedies include, but are not limited to, injunctive relief,

application to a court of competent jurisdiction for a receiver, demolition, or condemnation, contracting for the repair or purchase of the premises, or foreclosure of any lien the Village may have thereon.

- (b) A separate and distinct offense shall be committed each day on which such person or persons shall violate any provision of this Chapter.
- (c) The Village may enforce this Chapter in its administrative adjudication system or through the circuit court of venue.
- (d) Nothing herein contained shall prohibit the Village from immediately condemning a building as provided by law or this Village Code, seeking a demolition of a building, or taking other immediate action upon a determination that a building is a public nuisance or poses an imminent danger to the occupants of the building, or to the public, health, safety and welfare.

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