

O-19-003

TOWNSHIP OF MONTCLAIR

ORDINANCE AMENDING MONTCLAIR CODE CHAPTER 249, PROPERTY, VACANT AND ABANDONED

January 22, 2019
(date of introduction)

BE IT ORDAINED by the Township Council of Montclair, that Montclair Code Section 249 is amended as follows:

Chapter 249. Property, Vacant and Abandoned
Article I. Registration and Maintenance

§249-1. Definitions.

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

Abandoned Property

Property determined to be "abandoned property" in accordance with the meaning of such term in the Abandoned Properties Rehabilitation Act, N.J.S.A. 55:19-78 et seq., shall also be deemed to be vacant property for the purposes of this article. Each block and lot shall be a separate property.

Owner

Includes the title holder, any agent of the title holder having authority to act with respect to a vacant property, any foreclosing entity subject to the provisions of Public Law 2008, Chapter 127, Section 17 (N.J.S.A. 46:10B-51), any debtor in possession of the property, lienholder or mortgage holder, or any other entity determined by the Township to have authority to act with respect to the property.

Registrant

Any person or entity who files a registration statement in accordance with this Ordinance shall be also known as a Registrant.

Residence

Any building in which at least two-thirds (2/3rds) of the usable area which has been, is or may be used as a residence.

Structure

Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together.

Vacant Property

Any residence or structure that meets the following criteria shall be deemed vacant:

- 1) The residence is not legally occupied, or in which all lawful construction operations requiring a permit have substantially ceased; and
- 2) Is in such condition that it cannot legally be reoccupied without repair or rehabilitation.

Any property meeting the following conditions shall not be deemed vacant:

- 1) All building systems are in working order; and
- 2) Grounds are maintained in good condition; and
- 3) The property is not in violation of any applicable laws, regulations or ordinances; and
- 4) Legal residential occupancy has resumed, or the property is actively being publicly marketed by its owner for sale or rental.

Each block and lot shall be considered a separate property.

§249-2. Registration required; period of validity; general regulations.

- A. The Owner of any vacant property as defined herein shall, within 30 days after the building becomes vacant property or within 30 days after assuming ownership of the vacant property, or within 10 calendar days after receipt of notice from the Township, whichever is earlier, file a registration statement for each such vacant property on forms or manner provided by the Township for such purposes. The registration shall remain valid for six months from the date of registration. The registrant shall be required to renew the registration every six months as long as the building remains vacant property and shall pay a registration or renewal fee in the amount prescribed herein for each vacant property registered.
- B. Any Owner of any building that meets the definition of "vacant property" prior to the effective date of this article shall file a registration statement for that property in accord with Section A.
- C. The Registrant shall notify the Code Enforcement Office within 10 days of any change in the registration information including but not limited to change in ownership by filing an amended registration statement on a form provided by the Code Enforcement Office for such purposes.
- D. 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 Township against the owner or owners of the building.
- E. Any Owner of vacant property who intends to restore the property to occupancy following the initial registration shall file a detailed plan for restoration of the property to habitable condition on a form issued by the Code Enforcement together with an amended registration statement.
 - a. During the restoration period, the Owner shall be exempt for a period of twelve months from payment of the vacant property registration fee(s) as long as the property is being actively restored but shall comply with all other laws, regulations and municipal ordinances. Exception will terminate if the restoration activity ceases.
 - b. In the event the property has not been approved for occupancy at the end of the twelve-month period, the owner shall be liable for any fees waived. The Fire Chief or his designee may extend the waiver of the registration fee for not more than one additional twelve-month period in response to a written request, prior to the expiration of the initial twelve-month period, by the property owner where the Fire Chief or his designee finds compelling conditions existed outside the owner's control which inhibited the owner from restoring the property within the initial twelve-month period.

§249-3. Registration statement requirements; property inspection.

- A. After filing a registration statement or a renewal of a registration statement, the owner or registrant of any vacant property shall provide access to the Township to conduct an exterior and interior inspection of the building to determine compliance with the municipal code, following reasonable notice, during the period covered by the initial registration or any subsequent renewal.
- B. The registration statement shall include the name, street address and telephone number of a natural person 21 years of age or older, designated by the owner or owners 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 in connection with the enforcement of any applicable code. This person must maintain an office in the State of New Jersey or reside within the State of New Jersey. The statement shall also include the name of the person responsible for maintaining and securing the property, if different.
- C. An owner who is a natural person and who meets the requirements of this article as to location of residence or office may designate himself or herself as agent.
- D. By designating an authorized agent under the provisions of this section, the owner 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 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 notifies the Code Enforcement Office of a change of authorized agent or until the owner files a new annual registration statement. The designation of an authorized agent in no way releases the owner from any requirement of this article.

§249-4. Registration fees.

The fees for initial registration and renewals are:

Initial registration.....	\$500.00
First renewal.....	\$1,500.00
Second renewal	\$3,000.00
Subsequent renewals	\$5,000.00

§249-5. Requirements for owners of vacant property.

The registrant of any vacant property, and/or any person or entity maintaining, operating or collecting rent for any such building that has become vacant, shall, within thirty (30) days from vacancy:

- A. Secure the building against unauthorized entry for the pendency of vacancy.
- B. Post a sign affixed to the building indicating the name, address and telephone number of the owner, the owner's authorized agent for the purpose of service of process and the person responsible for day-to-day supervision and management of the structure, if such person is different from the owner holding title or the authorized agent. The sign shall be of a size and placed in such a location so as to be legible from the nearest public street or sidewalk,

whichever is nearer, but shall be no smaller than 18 inches by 24 inches; and the sign shall remain in place for the pendency of vacancy.

- C. Maintain the vacant property for the entire period of vacancy in accordance with all applicable local and state property maintenance codes, ordinances or regulations, building codes, health codes and fire codes pertaining to the exterior condition and appearance of the building, the safety and structural integrity of the building, the outdoor portion of the property, the condition and safety of accessory structures on the property, and any conditions on the property which constitute a hazard or adversely affect the health and safety of persons who may have contact with the vacant property.
- D. Promptly repair all broken windows, doors and other openings and unsafe conditions. Boarding up of open and broken windows and doors is prohibited, except as a temporary measure for no longer than 45 consecutive days, which period may be extended at the discretion of the Fire Chief or his Designee. Boards or coverings must be installed and painted in accordance with Township specifications.

§249-6. Administration.

The Fire Chief or his designee shall issue rules and regulations for the administration of the provisions of this article.

§249-7. Violations and penalties.

- A. Any registrant who is not in full compliance with this article or who otherwise violates any provision of this article or of the rules and regulations issued hereunder shall be subject to a fine not more than \$2,000 for each offense. Each day on which a violation of an ordinance exists shall be considered a separate and distinct violation and shall be subject to imposition of a separate penalty for each day of the violation as the Municipal Court Judge may determine. Fines assessed under this article shall be recoverable from the owner and shall be a lien on the property.
- B. For purposes of this section, failure to file a registration statement in accordance with § 249-2 above, knowingly providing misleading or incorrect information on the registration statement, or failure to comply with any provisions of this article, shall be deemed to be violations of this Article.
- C. In any case in which the municipality abates a nuisance, corrects a defect, or puts the premises in a condition so as to comply with the requirements of § 249-1, et. seq., any municipal ordinance or State Law applicable, the cost thereof shall be certified by the ordering Municipal Official to the governing body, which shall examine such certificate of cost and, if it finds said certificate to be correct, shall cause such cost to be charged against the real estate. The amount so charged shall thereupon become a lien and tax upon said real estate and be added to and be a part of the taxes next to be levied and assessed thereon, and enforced and collected, with interest, by the same officers and in the same manner as other taxes. The imposition and collection of a penalty by any Court for violations of the provisions of § 249-1, et. seq., or any ordinance or state law shall not constitute any bar to the right of the Township to collect such assessment of costs as certified for the necessity to abate a nuisance, defect or remedy necessary to put the premises in proper condition in the manner herein authorized.

§249-8. Effect on other laws; interpretation of provisions.

Nothing in this article is intended to or shall be read to prevent the Township from taking action against buildings found to be unfit for human habitation or unsafe structures, as provided in applicable provisions of the Code of the Township of Montclair, or imposing a lien for costs on any property to the full extent permitted by law, or pursuing any other remedy provided in law. Further, any action taken under any such code provision other than the demolition of a structure shall not relieve an owner from its obligations under this article.

Article II. Abandoned Property List

§249-9. Authorization and duties of Township Manager.

The public officer that is designated is the Township Manager or his designee (both collectively referred to hereafter simply as the "Township Manager"), and he/she is hereby directed to identify abandoned properties within the municipality, place said properties on an Abandoned Property List established as provided in Section 36 of P.L. 1996, c. 62 (N.J.S.A. 55:19-55), as amended by Section 28 of P.L. 2003, c. 210, and provide such notices and carry out such other tasks as are required to effectuate an Abandoned Property List as provided by law.

§ 249-10. Report.

The public officer shall provide a report to the Township Manager and governing body every six months, with respect to the number and location of properties on the Abandoned Property List, the status of those properties, and any actions taken by the municipality or by any qualified rehabilitation entity designated pursuant to the authority granted the public officer with respect to any property on the list or any other abandoned property within the Township of Montclair.

§249-11. Effect on Uniform Construction Code.

No provision hereof shall be construed as restricting or otherwise abrogating the enforcement and other powers of the Township's Construction Code Official under the New Jersey Uniform Construction Code, including, without limitation, N.J.S.A. 52:27D-123 et seq. and N.J.A.C. 5:23-1.1 et seq. (collectively, the "Code"). The provisions hereof shall be construed as consistent with the enforcement and other powers of the Township's Construction Code Official under the Code.

§249-12. Imposition of liens for cost recovery.

The Township Manager is authorized to impose liens for costs resulting from any action taken by the Township pursuant to this article, subject to the provisions of any law, regulation or ordinance governing the imposition of such liens.

Article III.

§ 249-13. Additional Requirements for Properties Subject to Foreclosure.

1. Any creditor filing a summons and complaint in an action to foreclose on a vacant and abandoned residential property shall be responsible for the care, maintenance, security, and upkeep of the exterior of the subject property, and if located out-of-State, shall be responsible for appointing an in-State representative or agent to act for the foreclosing creditor.
2. The Manager, or his/her designee or delegatee, or any Zoning and Code Enforcement Inspector (a "public officer"), is hereby authorized pursuant to P.L.1942, c.112 ([C.40:48-2.3](#) et seq.), to issue a notice to the creditor filing the summons and complaint in an action to foreclose, if the

public officer or other authorized municipal official determines that the creditor has violated the ordinance by failing to provide for the care, maintenance, security, and upkeep of the exterior of the 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. The issuance of a notice pursuant to this paragraph shall constitute proof that a property is “vacant and abandoned” for the purposes of [P.L.2012, c.70 \(C.2A:50-73\)](#).

3. An out-of-State creditor filing a summons and complaint in an action to foreclose on a vacant and abandoned residential property shall include the full name and contact information of the in-State representative or agent in the notice required to be provided pursuant to paragraph (1) of subsection a. of section 17 of [P.L.2008, c.127 \(C.46:10B-51\)](#).

4. Violations of this ordinance is punishable as follows:

- (a) An out-of-State creditor subject to this ordinance found by the municipal court, or by any other court of competent jurisdiction, to be in violation of the requirement to appoint an in-State representative or agent pursuant to the ordinance shall be subject to a fine of \$2,500 for each day of the violation. Any fines imposed on a creditor for the failure to appoint an in-State representative or agent shall commence on the day after the 10-day period set forth in paragraph (1) of subsection a. of section 17 of [P.L.2008, c.127 \(C.46:10B-51\)](#) for providing notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.
- (b) A creditor subject to the requirements of this ordinance found by the municipal court, or by any other court of competent jurisdiction, to be in violation of the requirement to correct a care, maintenance, security, or upkeep violation cited in a notice issued pursuant to this ordinance shall be subject to a fine of \$1,500 for each day of the violation. Any fines imposed pursuant to this paragraph shall commence 31 days following receipt of the notice, 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.
- (c) All money collected pursuant to this ordinance shall be utilized by the municipality for municipal code enforcement purposes.