

CITY OF AURORA, ILLINOIS
ORDINANCE NO. _____
DATE OF PASSAGE _____

**AN ORDINANCE AMENDING CHAPTER 12 OF THE AURORA CODE OF
ORDINANCES BY ADDING A NEW ARTICLE XI ESTABLISHING A VACANT AND
FORECLOSURE REGISTRATION SYSTEM REQUIRING REGISTRATION AND
INSPECTION OF PROPERTIES, AND ESTABLISHING REGULATIONS FOR
ENFORCEMENT THEREOF**

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City Council is aware that there has been a drastic rise in the number of foreclosed and/or vacant properties in the City of Aurora; and

WHEREAS, many of these properties are vacated prior to the conclusion of the foreclosure process, leaving the properties unoccupied for extended periods of time awaiting foreclosure sale, constituting a detriment to the public health, safety and welfare since they may pose a danger to police officers, firefighters and building inspectors/code enforcers entering the premises in response to emergencies or in the normal course of their duties; and

WHEREAS, vacant properties, especially those which remain unoccupied for more than 90 consecutive days, are susceptible to vandalism, often creating an attractive public nuisance; and

WHEREAS, vacant properties are unsightly, diminish neighboring property values and neighbors' sense of well-being, and allowing vacant properties to remain indefinitely vacant, even

in the absence of Code violations, is detrimental to the interests of the public health, safety and welfare of the citizens of the City of Aurora; and

WHEREAS, the City Council finds that vacant properties require greater code enforcement activities which result in greater financial cost to the City of Aurora; and

WHEREAS, the City Council finds that mortgagees have an interest in maintaining their vacant properties and are a responsible party subject to the terms and conditions of each mortgage; and

WHEREAS, such mortgagees are often located out of state, making it difficult to notify said mortgagees of violations of Aurora's codes and ordinances, and

WHEREAS, the City Council finds that the implementation of maintenance and monitoring plans for vacant and foreclosing properties will discourage property owners and those responsible for such properties from allowing same to remain vacant indefinitely and may prevent these properties from becoming a burden to the residents and taxpayers of the City of Aurora and provide the basis for returning these properties to their intended use and to the highest asset property tax value; and

WHEREAS, the abatement of nuisances caused by such properties, the repair and rehabilitation of such properties and their subsequent occupancy is recognized to be in the best interest of the citizens of the City of Aurora; and

WHEREAS, in furtherance of its home rule powers, the City Council desires to protect the public health, safety and welfare and eliminate or minimize the detrimental effects such abandoned and vacant properties have on the well-being and high quality of life of the citizens of the City of Aurora.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows:

Section One: That in Chapter 12, a new Article XI shall be established and entitled “Vacant Structure Registration” in the Aurora Code of Ordinances, and that the same be and is hereby added to read as follows:

ARTICLE XI VACANT STRUCTURE REGISTRATION

Section 12-500. Purpose.

It is the finding of the City Council that properties in the process of foreclosure (“foreclosing” properties) and/or vacant properties are unsightly, unsafe, and have a negative effect on the community. The purpose of this article is to establish a program for identifying, registering and monitoring such foreclosing and/or vacant properties, to set forth the responsibility of all persons with any interest in such properties, including mortgagees, lenders, trustees and service companies, and to speed the rehabilitation and re-occupation of such properties.

Section 12-501. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) **Abandoned Real Property** means any real property in the City of Aurora that is vacant, as defined herein, or shows evidence of vacancy and is the subject of a *lis pendens*, or Notice of Default and/or Notice of Sheriff’s Sale, or a foreclosure sale where title was retained by the mortgagee in the foreclosure, or has been transferred under a deed in lieu of foreclosure or sale to the mortgagee.

- (b) **Building (structure)** means any physical edifice that is built or installed and is located on and affixed to the land and used for or intended for supporting or sheltering any use or occupancy. The terms “building” and “structure,” as used in this article, shall be synonymous and shall include any portion thereof.

- (c) **City** means the City of Aurora, Illinois.

- (d) **Code Enforcement Officer or Inspector** means any authorized agent or employee of the City of Aurora whose duty it is to assure code compliance.

- (e) **Dangerous or Unsafe Building** means all buildings or structures that are found to pose a danger to the life, health, property or safety of the public by failing to provide minimum safeguards and which may cause or aid in the spread of disease or cause injury to emergency personnel or to neighboring buildings, or because the building contains unsafe equipment, or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty or incomplete construction or unstable, that partial or complete collapse or systems failure is possible.

- (f) **Days** means consecutive calendar days.

(g) **Default** means the failure to fulfill a contractual obligation for which a mortgagee, lender or trustor files or has the ability to file a foreclosure action or public notice of default on the mortgage.

(h) **Department** means the Department of Neighborhood Standards.

(i) **Director** means the director of the City's Department of Neighborhood Standards, or his designee.

(j) **Deed in Lieu of Foreclosure and/or Sale** means a recorded document that transfers ownership of a property to the mortgage lienholder upon consent of the borrower. This definition also applies to a transfer of title carried out in a consent foreclosure.

(k) **Evidence of Vacancy** means any condition that on its own, or combined with other conditions present would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to, overgrown and/or dead vegetation, electricity/water/other utilities turned off, statements by neighbors/passers-by/delivery agents or government agents, lack of response to notices, returned or forwarded mail, unsecured doors, absence of, or condition of, personal belongings on the property, habitation by vagrants/transients/trespassers, lack of marketing for purposes of selling or renting property, etc.

(l) **Foreclosure** means the judicial process by which a property, placed as security for a real estate loan, through a judicial process, is ultimately to be sold at an auction/sheriff's sale to satisfy the debt upon which the borrower has defaulted.

(m) **Foreclosing or Foreclosure Proceedings** means the process by which a property, placed as security for a real estate loan, upon which a Notice of Default, Notice of Foreclosure or a *lis pendens* has been issued or filed by a lender, mortgagee, or beneficiary of any deed of trust.

(n) **Lien** means the legal claim of the City upon the property of another to secure the payment of a debt or the performance of a legal obligation.

(o) **Local Agent** means the agent designated by the owner upon registration as required under this article. The local agent or its employees must be able to be located and served at the local address during a majority of the working week (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and must have a permanent address located no more than thirty (30) miles from any city border.

(p) **Mortgagee** means the creditor, including, but not limited to, service companies, banks, lenders, seller under an installment contract, articles of deed, articles of agreement for deed, or other such similar agreement, or other such financial entities 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 the mortgage contractual agreement.

(q) **Nuisance Property** means any property, whether residential or commercial, which has remained vacant more than twenty-four (24) months (including the one hundred eighty days provided in the Vacant Property definition herein for a total of 24 months of vacancy) from the

original issuance of a Vacant Structure Registration Certificate. All properties which are vacant on January 1, 2016 and have been vacant for five (5) years prior thereto shall be automatically deemed a Nuisance Property by the Director.

(r) **Owner** means, without limitation, every person, agent, operator, firm, corporation, entity, or service company, who alone or jointly or severally with others, and with or without the right of possession:

(1) Has the legal or equitable title to, or having control of, any building, dwelling, dwelling unit, land or structure; or

(2) Has care, charge, or control of any building, dwelling, dwelling unit, building, land or structure, in any capacity, including, but not limited to agent, executor, administrator, trustee, or guardian of the estate of the holder of legal title pursuant to a court order, trust agreement or other such similar agreement; or

(3) Is a mortgagee which under the terms of a mortgage has a contractual responsibility for the property, or pursuant to a provision in the mortgage agreement, the mortgagee is authorized to act to secure or repair the property under any circumstance or where mortgagor no longer takes responsibility for the property; or is a mortgagee in possession of any such property; or is a mortgagee that has instituted foreclosure proceedings against the mortgagor; or

(4) Is an officer, member of a board of managers, or trustee of the association of unit owners of a condominium or townhouse complex with direct control over the property pursuant to applicable State law, declaration and/or bylaws.

(5) Is an agent, trustee, or other person appointed by the courts and vested with possession or control of any property; or

(6) Is a party under an installment contract, articles of agreement for deed, articles of deed or any other such similar agreement.

(s) **Person** means any natural individual, corporation, partnership, limited liability company or any such entities.

(t) **Premises** means a lot, plot or parcel of land including any structures thereon.

(u) **Property** means any real estate, whether residential or commercial, located in the City of Aurora.

(v) **Public Nuisance**, for purposes of this article, shall include the following:

(1) Any physical condition or use of a premises that is regarded as a public nuisance at common law, under the Illinois Compiled Statutes, or under City ordinances; or

(2) Any physical condition, use or occupancy of any premises or its appurtenances that is considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, swimming pools and unsafe fences or structures; or

(3) Any building that has unsanitary sewage or plumbing facilities; or

(4) Any building designated by a Code Enforcement Officer or Inspector as unsafe for human habitation or use; or

(5) Any building that constitutes a fire hazard, or is unsafe or unsecured to a degree that it endangers life, limb or property; or

(6) Any premises that is unsanitary, or which is littered with rubbish or garbage, or which has an uncontrolled growth or weeds; or

(7) Any building that is in a state of dilapidation, deterioration or decay; or improperly constructed; or unsecured; or vacant and boarded; or damaged by fire to the extent that it no longer provides shelter; or in danger of collapse or structural failure; or dangerous to anyone on or near the premises; or

(8) Any premises that contains evidence of unlawful activity to a degree that such activity may endanger, threaten or otherwise negatively impact the users, adjacent properties and/or the value of adjacent premises; or

(9) Any building deemed to be a “dangerous or unsafe building” under this article.

(w) **Registration Statement of Intent** refers to the form that is to be completed by the owner of a vacant structure and/or responsible parties, which contains specific information regarding the structure and the owners’/responsible parties’ plans for its rehabilitation, maintenance, sale, demolition or removal.

(x) **Responsible Party** means any and all owners, as defined above in subsection (r), tenants, occupiers, property managers, and lessees of any building, whether residential or commercial, alone or jointly or severally.

(y) **Unoccupied Building** means a building or portion thereof which lacks the habitual presence of human beings who have a legal right to be on the premises, including buildings ordered vacated pursuant to a hearing relating to Code violations.

(z) **Vacant** means a structure that shows evidence of vacancy, as defined herein, and/or is lacking the habitual presence of human beings who have a legal right to be on the premises, for one hundred and eighty (180) consecutive days, or which substantially all lawful business or construction activity or residential occupancy has ceased, or which is substantially devoid of contents. For purposes of this article, multi-unit residential property containing 4 or more dwelling units shall be considered vacant when 90 percent (90%) or more of the dwelling units are unoccupied. For non-residential property, such property shall be considered “vacant” for purposes of this article if business operations are conducted daily on less than ten percent (10%) of the overall square footage of the building.

Section 12-502. Enforcement authority; Vacant Building Determination.

(a) The Director is authorized to administer and enforce the provisions of this article, including, but not limited to, maintaining lists setting forth the status of vacant structures. The Director may delegate his power and duties under this article to an appropriate administrator or inspector as his designee.

(b) The Director shall evaluate all buildings within the city limits which he believes to be unoccupied and make a determination for each as to whether the building is vacant as defined in this article. In making the determination as to whether a structure is Vacant for purposes of this

article, the Director shall also consider other factors, including, without limitation, the presence of rental or for sale signs on the property; whether there has been any construction or legal repairs within the preceding three (3) months; whether windows and/or doors are broken, boarded up, removed, or unhinged; the status of utility services; and/or police activity for trespassers, vandalism or other illegal acts being committed at the property within the preceding three (3) months. For purposes of non-residential property, such structures may be deemed vacant where the business operations are conducted daily on less than ten percent (10%) of the total square footage of the building, or where all lawful business has ceased for at least three (3) months. For non-residential buildings that are less than ten (10) years old on the date that the Director makes his vacancy determination, and such buildings have no ordinance violations, then in that event the Director shall require that such non-residential buildings shall be registered and pay the appropriate fees.

(c) For buildings the Director has designated as vacant, a notice of determination shall be sent to all Owners and Responsible Parties requiring the registration of the vacant building. The notice of determination shall be mailed via first class United States mail to the last known address based on mailing information found in public records, including, without limitation, information in the most recent Kane, Du Page, Kendall or Will Counties' tax roll or information kept in the records of the Illinois Secretary of State. Failure of delivery shall not excuse a person from complying with this article. The Director may also 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. Proof of service shall be kept in the records prepared in the normal course of the Department's duties.

Section 12-503. Responsible parties; liens.

Every Owner and Responsible Party shall be jointly and severally liable with every other Owner and Responsible Party for the obligations set forth in this article. Any reference to an Owner in this article shall include any and all Responsible Parties. All aspects of this article, including but not limited to unpaid fees, costs, fines and charges assessed or incurred by the City, shall constitute a lien on the property upon which such structure is situated and will be deemed to run with the land.

Section 12-504. Obligation to register vacant structures.

(a) Within ten (10) days of the issuance of a notice of determination by the Director, the Owner of the structure shall register the vacant structure and pay the appropriate fee as set forth in this article. Registration of vacant structures shall be done semi-annually.

(b) During the period of registration, the Owner shall provide access to the City to conduct inspections of the property, both interior and exterior, as deemed necessary by the City, following reasonable notice, to determine compliance with this article and any other relevant codes and ordinances of the City.

(c) The Owner shall comply with all applicable ordinances of the City and/or State laws, including, without limitation, property maintenance, building, fire and zoning ordinances in the

City's Code of Ordinances. To this end, the Owner shall apply for all building, fire, zoning or other permits necessary to bring the structure into compliance within thirty (30) days of registering the property..

(d) The Owner shall, within ten (10) days of registering the property, complete the removal of all:

(1) Combustible materials from the structure in compliance with the applicable fire regulations;

(2) Waste, rubbish or debris from the interior and exterior of the structure; and

(3) Excessive vegetation, including grass in excess of eight (8) inches from the yard(s) surrounding the vacant structure in accordance with City ordinances.

(e) The Owner shall immediately lock, board, barricade and/or secure all windows, doors, and other openings in the structure to prohibit entry by unauthorized persons as provided in the ordinances of the City. The Owner shall, as needed, be responsible for providing additional security in the event of increased danger to human life or the public welfare, as determined by the City in light of police call logs and/or other records of the City.

(f) The obligations of the Owner are continuing obligations which are effective throughout the time of the structure's vacancy, as that term is defined in this article.

Section 12-505. Registration of foreclosing structures

(a) Within fourteen (14) days of a legal filing seeking foreclosure, or for a tax deed or other judicial proceeding seeking ownership of a property and including those Persons involved in a Deed in Lieu of Foreclosure process, all such Persons shall register said property as set forth in this article and pay the registration fee of \$250.00.

(b) The Person registering must certify that the property has been inspected within the immediately preceding thirty (30) days, and certify whether the property was found to be abandoned, vacant, or showing evidence of vacancy at the time of registration.

(c) If the property is not vacant at the time of registration, then the Person registering the Property shall inspect the property every thirty (30) days to determine if the property has become vacant. If, upon subsequent inspection, the property is determined to be vacant, the Person shall register the property as vacant pursuant to this article.

(d) A separate registration is required for each Foreclosing property.

(e) All such Properties are required to register semi-annually throughout the duration of foreclosure proceedings and/or the property is vacant.

Section 12-506. Required registration information and procedure.

(a) All Owners or Persons required to register a Property pursuant to this article, shall file with the City the registration form provided, which shall contain among other things, the following information:

(1) The exact street address of the property, the primary intended use of the property, and if the property is a multi-unit structure the total number of dwelling units in each building on the property.

(2) The Owners' name(s), mailing address(es), email address(es) and telephone number(s). The address may not be a post office box. If the property is owned by a corporation, limited liability company, partnership, limited partnership, trust, or real estate investment trust, the name and address of any of the following shall be provided:

- (i) For corporation, a corporate officer and the chief operating officer;
- (ii) For a partnership, the managing partner;
- (iii) For a limited liability company, the managing member;
- (iv) For a limited partnership, the general partner;
- (v) For a trust, the trustee;
- (vi) For a real estate investment trust, the general partner or an officer.

(3) If the Owner, foreclosing party or other applicable Person does not reside in the City, a local agent shall be designated to be the party authorized to receive, on behalf of the owner and/or foreclosing party, any notice, order, or summons issued for purposes of this article. Such agent must be over the age of 21 years and must be located within thirty (30) miles of any city border. The registration shall include the name of the designated local agent, the mailing address, telephone number and email address. Mailing address of the designated local agent may not be a post office box. A courtesy copy of all official notices may be sent to the designated local agent.

(4) Name and address of all lien holders and/or all other parties with ownership interest in the property.

(5) The name, mailing address, telephone number and email address for the local agent or entity responsible for securing and maintaining the property.

(b) The registering party will also be required to fill out a "Registration Statement of Intent" setting forth the expected period of vacancy and plans for the property, including plans to rehabilitate, maintain, sell, or demolish the property.

(c) An amended registration must be filed within seven (7) days of any change in the information contained in the semi-annual registration. A new registration and fee is required for any change in ownership, regardless of the nature of the transfer of title.

Section 12-507. Registration Fees; Renewal.

(a) The fee for registering a vacant structure of \$250.00 shall be charged upon initial registration of any foreclosing property or vacant structure.

(b) The fee for renewing the vacant structure registration shall be \$250.00 and continue at the same rate for the first twenty-four (24) months a property remains vacant as defined under this

article. This is intended to run with the land not with the Owner, such that the twenty-four months do not begin again if a new Owner or other party becomes involved with the property.

(c) If a property, initially registered pursuant to Section 12-505, is subsequently deemed to be unoccupied, vacant or shows evidence of vacancy, the foreclosing party, tax buyer, recipient of Deed in Lieu of Foreclosure or Person shall file an amended registration form certifying the property is vacant.

(d) If a property remains in foreclosure or vacant beyond the aforementioned initial twenty-four (24) month time period, the following may apply:

(1) The registration fee increased to \$500.00 for such properties that are in foreclosure or are vacant for over two (2) years and thereafter; and/or

(2) A fine of not less than \$50.00 nor more than \$500.00 per month assessed for properties that are vacant for at least three (3) years and thereafter;

(e) The registration shall be renewed every six (6) months (in January and July of each calendar year).

(f) Payment of the applicable registration fee does not relieve or exempt the Owner or other Person from paying any and all fines, penalties, costs or other such charges assessed for non-compliance with property maintenance standards or other code provisions in this article or elsewhere in the City's ordinances.

Section 12-508. Vacant, foreclosing property inspection and maintenance standards.

(a) Within thirty (30) days of the initial vacant structure registration or the registration of an amended foreclosing property registration after the property becomes vacant, the City may, as necessary, conduct a comprehensive code-compliance inspection of the entirety of the vacant building/property. Such inspection will determine the extent of compliance with all applicable City ordinances, including, without limitation, ordinances relating to property maintenance, building, health, water, sewer and fire codes. The City shall send any such inspection report to all registered owners and/or responsible parties within thirty days of completion. Periodic re-inspections may take place, as necessary, until code/ordinance compliance is achieved. Timely code/ordinance compliance is required upon notification that violations exist on the property. Failure to comply with this inspection requirement shall constitute a violation and subject to fines set forth in Section 12-512.

(b) All properties registered under this article shall comply with all applicable ordinances pertaining to property located within the City limits as set forth in the City's code of ordinances and as adopted by the City Council from time to time. Registration does not exempt the Owner from compliance with all applicable codes and ordinances including this article, nor does it preclude any of the actions the City is authorized to take pursuant to this article, elsewhere in the City's ordinances and pursuant to State statute.

Section 12-509. Required Liability Insurance.

It shall be the responsibility of the property Owner to maintain liability insurance on all vacant buildings. A Certificate of Insurance for each vacant property shall be provided to the City with the initial vacant property registration form and subsequent renewal applications whenever an insurance policy has expired or there is a change of insurance carrier. All insurance policies for vacant property shall provide prior written thirty (30) day notice to the Director of any lapse, cancellation or change in coverage. Minimum insurance amounts are as follows:

- (1) Residential properties:
 - (i) Single-family and two (2) units: \$250,000.00
 - (ii) Three (3) to eleven (11) units: \$750,000.00
 - (iii) Twelve (12) to forty-nine (49) units: \$1,000,000.00
 - (iv) Fifty (50) or more units: \$2,000,000.00
- (2) Non-residential properties: \$2,000,000.00.

Section 12-510. Time restrictions—Vacant structures.

(a) It is the policy of the City that boarding up of a vacant property is a temporary solution to prevent unauthorized entry into a vacant building and that boarded buildings are a public nuisance. A vacant structure may not remain boarded up for longer than six (6) months unless an extension of that time is approved by the Director in writing.

(b) With respect to any structure that has been registered as vacant for a period of over twenty-four (24) months, the Director may require that the property owner submit a plan of action, which shall include, without limitation, identifying an estimated date the property will be habitable, occupied, and/or offered up for rent or sale as well as any other terms and conditions deemed appropriate by the Director.

(c) Notwithstanding the provisions of this article, the City shall retain the right afforded under relevant State or local law to declare a non-compliant vacant structure unsafe and/or a public nuisance. The City may pursue whatever legal recourse afforded to it by law, including, but not limited to, action to abate a public nuisance or an action seeking the demolition of a dangerous and unsafe building.

Section 12-511. Enforcement and penalties.

(a) Except as otherwise set forth, any person found to be in violation of any provision of this article shall be subject to a fine of not less than \$50.00 and not to exceed \$750.00 per day. Each day that a violation continues after due notice has been served shall be deemed a separate offense. Prosecution under this section is a remedy cumulative to any and all other remedies at law and equity, including but not limited to the remedies provided in the Code of Ordinances, the City's Property Maintenance Ordinance as set forth in Chapter 12 thereof, and/or under any applicable State statutes.

(b) All fees, costs, or charges assessed or incurred by the City pursuant to this article shall be a lien upon the real property. The lien shall be superior to all subsequent liens and encumbrances. The Director shall file a notice of lien within two (2) years after such cost and expense is incurred in the office of the applicable county recorder of deeds. The lien may be enforced by proceedings to foreclose, such as in the case of mortgage's and mechanic's liens.

Section 12-512. Administrative proceedings relating to registration and building code violations.

(a) Administrative hearing procedures as set forth in Chapter 12, Article VII of the City's Code of Ordinances shall be followed for all violations of this article and, as such, is incorporated by reference herein.

(b) The statutory provisions of the Illinois Administrative Review Act ("Review Act"), 735 ILCS 5/3-101, *et seq.*, are hereby adopted and incorporated into this section. The Administrative Review Act shall apply to the review of any and all final decisions issued by the administrative hearing officer in administrative proceedings held pursuant to this article.

(c) Unless stayed by a court of competent jurisdiction, any final decision of the hearing officer, and any fine, penalty, or administrative fee imposed pursuant to this article, which remain unpaid in whole or in part after the expiration of the deadline for seeking judicial review under the Administrative Review Act may be enforced in the same manner as any judgment entered by a court of competent jurisdiction.

Section Two: That this ordinance shall be in full force and effect, and shall be controlling on _____, 2016.

Section Three: That all ordinances or parts of ordinances thereof in conflict herewith are hereby repealed to the extent of any such conflict.

Section Four: That any Section or provision of this ordinance that is construed to be invalid or void shall not affect the remaining Sections or provisions which shall remain in full force and effect thereafter.

PASSED by the City Council of the City of Aurora, Illinois, on _____.

AYES _____ NAYES _____ ABSENT _____

APPROVED AND SIGNED by the Mayor of the City of Aurora, Illinois, on _____.

Mayor

ATTEST:

City Clerk

City of Aurora
Law Department
44 East Downer Place
Aurora, IL 60507
(630) 256-3060