

ORDINANCE NO. 2016-06
AN ORDINANCE AMENDING CHAPTER 150 OF THE BOROUGH CODE FOR PROPERTY MAINTENANCE

Explanation: This ordinance amends Chapter 150 of the Borough of Kenilworth Code for PROPERTY MAINTENANCE by providing an additional article creating creditor responsibility for property when it is vacant, abandoned or in foreclosure.

WHEREAS, abandoned properties potentially create a wide range of problems including fostering criminal activity, creating public health problems, diminishing the quality of life for residents and businesses in the general area, increasing the risk of property damage to adjacent property owners through arson and vandalism and discouraging neighborhood stability and revitalization, diminishing the property values of neighboring properties and, for those reasons, are presumptively considered to be nuisances, and

WHEREAS, THE Borough Committee of the Borough of Kenilworth finds that abandoned and vacant properties exist within the boundaries of the Borough, and

WHEREAS, It is in the public interest for the Borough to establish a mechanism to identify and track vacant and abandoned properties which are in foreclosure, to establish standards for the maintenance of those properties and to enforce those standards,

NOW, THEREFORE, BE IT ORDAINED by the Borough Committee of the Borough of Kenilworth that the Property maintenance Code of the Borough be amended to add additional articles and Sections as follows:

ARTICLE V
CREDITORS AND MORTGAGE HOLDERS RESPONSIBILITIES FOR VACANT, ABANDONED AND PROPERTIES BEING FORECLOSED

150-25 DEFINITION OF TERMS RELATED TO CREDITORS AND MORTGAGE HOLDERS

For the specific purposes of this code, the following terms, whenever used herein or referred to in this code, shall have the respective meanings assigned to them hereunder unless a different meaning clearly appears from the context:

Exterior of premises shall mean those portions of a structure which are exposed to public view or are visible from adjoining or adjacent lots, including all outside surfaces and appurtenances thereto, and the open land space of any premises outside of any building or structure erected thereon, including vacant lots.

Nuisance shall mean:

- a. Any public or private condition that would constitute a nuisance according to the statutes, laws and regulations of the State of New Jersey, its governmental agencies or the ordinances of the Borough.
- b. Any physical condition existing in or on the exterior of any premises which is potentially dangerous, detrimental or hazardous to the life, health or safety of persons on, near or passing within the proximity of the premises where the condition exists.

Operator shall mean any person, persons or entity not the owner, but including any agent of the owner, who has charge, possession, custody, care or control of a dwelling or premises or a part thereof.

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Owner shall mean any person, persons or entity who shall have legal or equitable title in any form whatsoever to any premises or part thereof, including any fiduciary, trustee, receiver, guardian or mortgagee in possession. Any lessee, sublessee or assignee of a lessee of any part of any premises shall be deemed an "owner" with respect to that portion of the premises sublet, leased or assigned.

Premises shall mean a lot, plot or parcel of land, right-of-way or multiples thereof, including the building or structures thereon.

Refuse or rubbish shall mean all discarded, useless, unusable, unused or worthless solid waste matter or materials, combustible or noncombustible, including but not limited to garbage, trash, ashes, paper, paper goods and products, wrappings, cans, bottles, containers, yard clippings, garden waste, debris, junk, glass, boxes, crockery, wood, plastic, rubber, leather, furniture, household goods, appliances, bedding, scrap lumber, scrap metal, construction material, inoperable machinery or parts thereof, garden or farming implements and supplies, dead or rotting vegetation, tires and abandoned, inoperative or unusable automobiles and vehicles and solid commercial or industrial waste. Anything herein to the contrary notwithstanding, a compost pile free of discarded foodstuffs shall not be deemed to be "refuse" or "rubbish."

Unregistered motor vehicle shall mean a motor vehicle without a valid and current State inspection sticker.

"Creditor" means a State chartered bank, savings bank, savings and loan association or credit union, any person or entity required to be licensed under the provisions of the "New Jersey Residential Mortgage Act," P.L. 2009, c.53 (C.17:11C-51 et seq.), any foreclosing entity subject to the provisions of C.46:10B-51 (P.L. 2008, c. 127, Sec. 17, as amended from time to time) and any entity acting on behalf of the creditor named in the debt obligation including, but not limited to, servicers.

"Vacant and Abandoned" residential property means, where a property is not occupied and three or more of the following conditions exist:

- (a) overgrown or neglected vegetation;
- (b) the accumulation of newspapers, circulars, flyers or mail on the property;
- (c) disconnected gas, electric, or water utility services to the property;
- (d) the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (e) the accumulation of junk, litter, trash or debris on the property;
- (f) the absence of window treatments such as blinds, curtains or shutters;
- (g) the absence of furnishings and personal items;
- (h) statements of neighbors, association management, delivery persons, or government employees indicating that the residence is vacant and abandoned;
- (i) windows or entrances to the property that are boarded up or closed off or multiple window panes that are damaged, broken and unrepaired;
- (j) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;

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- (k) a risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
- (l) an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
- (m) the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;
- (n) a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;
- (o) any other reasonable indicia of abandonment.

150-26 REGULATION FOR CARE, MAINTENANCE, SECURITY AND UPKEEP OF PROPERTIES IN FORCLOSURE AND VACANT AND ABANDONED RESIDENTIAL PROPERTIES

150-26.1 . REGISTRATION OF VACANT AND ABANDONED PROPERTIES

- (a) Every creditor filing an action to foreclose on a mortgage of any residential property within the Borough of Kenilworth shall, within ten (10) days thereof, notify the Borough Clerk for the Borough in writing by mail of said filing. (See NJSA 46:10B-51)The notice shall also include the street address, lot and block number of the property, and the full name and contact information of an individual located within the state who is authorized to accept service on behalf of the creditor.

The notice shall also contain the name and contact information of the representative of the creditor who is responsible for receiving complaints of property maintenance and code violations. In the event the creditor that has served a summons and complaint in an action to foreclose on a residential property is located out-of-state, the notice shall also contain the full name and contact information of an in-state representative or agent who shall be responsible for the care, maintenance, security and upkeep of the exterior of the property if it becomes vacant and abandoned.

- (b) A Creditor filing a summons and complaint in an action to foreclose on a vacant and abandoned property, or a Creditor who has previously filed a summons and complaint to foreclose on a residential property which subsequently becomes vacant and abandoned, shall within thirty (30) calendar days after the building becomes vacant and abandoned or within thirty (30) calendar days after assuming ownership of the Vacant and Abandoned property, whichever is earlier; or within ten (10) calendar days of receipt of notice from the Borough, and annually thereafter, file a registration statement for such Vacant and Abandoned property with the municipal clerk on forms provided by the Borough for such purposes. Any failure to receive notice from the Borough shall not constitute grounds for failing to register the vacant and abandoned property.
- (c) Each vacant and abandoned property having a separate block and lot number as designated in the official tax maps of the Borough shall be registered separately.
- (d) The registration statement shall include the name, street address, telephone number, and email address (if applicable) of a person twenty-one (21) years or older, designated by the Creditor as the authorized agent within the State of New Jersey for receiving notices of code violations and for receiving process in any court

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proceeding or administrative enforcement proceeding on behalf of such Creditor in connection with the enforcement of any applicable code.

- (e) The registration statement FOR EAC shall include the name, street address, telephone number, and email address (if applicable) of the firm and the actual name(s) of the firm's individual principal(s) responsible for maintaining the Abandoned and Vacant property. The individual or representative of the firm responsible for maintaining the Abandoned and Vacant property shall be available by telephone or in person on a twenty-four-hour per day, seven-day per week basis. The two entities may be the same or different persons. Both entities shown on the statement must maintain offices in the State of New Jersey or reside within the State of New Jersey.
- (f) The registration for each property shall remain valid for one full year from the date of registration except for the initial registration which shall be valid through December 31st of the year in which it was filed. The Creditor shall be required to renew the registration annually as long as the building remains Vacant and Abandoned and shall pay a registration or renewal fee in the amount prescribed in Paragraph c. of this Section for each Vacant and Abandoned property registered.
- (g) The renewal shall be completed within the first two (2) weeks of December, just prior to expiration. The initial registration fee shall be pro-rated for registration statements received less than ten (10) months prior to that date.
- (h) The Creditor shall notify the municipal clerk within thirty (30) calendar days of any change in the registration information by filing an amended registration statement on a form provided by the municipal clerk for such purpose.
- (i) The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the Borough against the Creditor.
- (j) Fee Schedule

The initial registration fee for each vacant and abandoned property under the provisions of this Section shall be five hundred (\$500.00) dollars. The fee for the renewal for the second year shall be one thousand (\$1,000.00) dollars and thereafter an additional thousand dollars per year up to a maximum of five thousand dollars \$5,000.00 per yearly renewal.

150-26.2 CREDITOR RESPONSIBILITY FOR VACANT AND ABANDONED PROPERTIES

- (a) A Creditor filing a summons and complaint in an action to foreclose on a residential property within the Borough shall be responsible for the care, maintenance, security and upkeep of the exterior of the property, after the property becomes vacant and abandoned.
- (b) Where a Creditor is located out-of-state, ⁴ the Creditor shall be responsible for appointing an in-State representative or agent to act for the foreclosing creditor.

150-26.3 ENFORCEMENT

- (a) The enforcement officers designated shall be authorized to issue a notice to a Creditor that has filed a summons and complaint in an action to foreclose on a residential property within the Borough, if the enforcement officer determines that the Creditor has violated this Section by failing to provide for the care, maintenance, security, and upkeep of the exterior of a Vacant and Abandoned property.

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- (b) Where a Creditor is an out-of-State Creditor, the notice shall be issued to the representative or agent that has been identified by the Creditor pursuant to this ordinance.
- (c) The notice referenced in Paragraph (b) of this sub-Section shall require the Creditor to correct the violation(s) 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.
- (d) The issuance of a notice pursuant to Paragraph (b) of this Section shall constitute proof that a residential property is Vacant and Abandoned for the purposes of this Section.

150-26.4 Violations and Penalties

- (a) A Creditor subject to this Section that is found by the municipal court of the Borough, 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 Section 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 the service 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 service of the notice.
- (b) An out-of-state Creditor subject to this Section that is found by the municipal court of the Borough, 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 this Section 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 10th-day period after filing a foreclosure complaint that provides notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.
- (c) A Creditor subject to this Section that is found by the municipal court of the Borough, or by any other court of competent jurisdiction, to be in violation of the requirement to register a Vacant and Abandoned property pursuant to this Section shall be subject to a fine not exceeding two thousand (\$2,000.00) dollars. Any fines imposed on a Creditor under this paragraph shall commence 11 days following receipt of notice from the Borough pursuant to this Section.

150-27 ADMINISTRATIVE PROVISIONS

150-27.1 Enforcement Officer

This chapter may be enforced by the Construction Code Official, Zoning Officer, Health Inspector, Police Department and the Construction Code Office of the Borough.

150-27.2 Enforcement Procedure.

Whenever the Enforcement Officer determines that there is or has been a violation of any provision of this chapter, the Officer shall give notice of such violation to the person, persons or entities responsible therefor under this chapter. Such notice shall be in writing and shall include a concise statement of the reasons for its issuance. Such notice shall be deemed to be properly and sufficiently served if a copy thereof is sent by registered or certified mail to the last known address of the person or entity upon which the same is served, as shown by the most recent tax lists of the Borough, or if a copy thereof is handed to the person or persons or a copy thereof is left at the usual place of abode or office of the persons or entities. Notice shall be given as aforesaid within or without the Borough. The notice shall also state that unless the violation is

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abated, removed, cured, prevented or desisted from within ten (10) days of the date of service of such notice (exclusive of the date of service), a summons shall issue for such violation. The Enforcement Officer may, at the time the officer issues the notice, extend the period for correction of the violation stated in the notice for a period in excess of the aforesaid ten (10) days if, in the Officer's judgment, the abatement, removal, prevention, cessation of or cure of the condition violated cannot reasonably be effected within the ten (10) day period; and in such cases the Enforcement Officer shall state such reasonably required extended period in the notice, which shall then be applicable instead of the aforesaid ten (10) days. In the event the violation is not abated, removed, cured, prevented or desisted from or otherwise fully remedied within the ten (10) day period or within such extended period as set forth in the notice pursuant to the foregoing, a summons shall then issue against the person, persons, entity or entities so notified.

150-27.3 Emergency Conditions.

Whenever the Enforcement Officer finds that an emergency condition in violation of this chapter exists, which condition requires immediate attention in order to protect the public health or safety, the Officer may issue an order by service of notice reciting the existence of such an emergency condition and requiring that such action be taken by the violator as soon as reasonably necessary to meet the emergency. Notwithstanding any other provision of this chapter, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon objection in writing to the Enforcement Officer any such person shall be afforded a hearing before the Governing Body of the Borough as soon as is reasonably possible. After such a hearing and decision by the Governing Body as to the existence or nonexistence of the emergency condition, the Governing Body may continue such order in effect, or modify or withdraw it, subject to issuance of a summons for violation thereof if such order is continued.

150-28 VIOLATIONS AND PENALTIES.

With the exception of the violations and penalties contained within this Chapter, any person or entity who shall violate any of the provisions of this chapter or any order promulgated hereunder shall, after a summons is issued under the terms hereof, upon conviction, be punished as follows:

- a. For a first offense, by a fine not to exceed fifty (\$50.00) dollars.
- b. For a second offense, by a fine not to exceed two hundred (\$200.00) dollars.
- c. For a third offense or any subsequent offenses, by the penalty stated in this Chapter.

150-29 to 150-35 RESERVED.

150-36 BRUSH, GRASS AND DEBRIS.

150-36.1 Prohibited Accumulation.

It shall be unlawful to gather, accumulate, keep or permit the gathering, accumulation or keeping of brush, weeds, dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash, debris, litter, refuse, rubbish or any of the articles on any land or in any place in the Borough in such a manner as to constitute a menace to public health, safety or general welfare or to create a fire hazard.

150-36.2 Removal Required.

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The person having charge or control over the premises where any material has accumulated in violation of any provision of the property maintenance code shall remove or cause the removal of the articles as provided in this chapter.

150-36.3 Enforcement; Notice.

- a. *Enforcement.* If any condition described in subsection entitled Prohibited/Accumulation above is deemed to exist, it shall be the duty of the Fire Inspectors, the Health Officer, the Sanitarian and the Police Department of the Borough, or any of them, to then give written notice to the owner of the premises or the tenant therein or the person having charge or control thereof, requiring the removal of the articles within ten (10) days after the service of the notice.
- b. *Notice.* Any notice mentioned herein may be served in person or by mailing to the last known address of the respective owner or tenant or person in charge. When the owner or person in charge does not reside in the Borough and when service is by mailing, then a copy of the notice shall be posted on the same day as the mailing at the premises where the condition exists. Failure to rectify the condition of which notice is given within the period specified in the notice shall constitute a violation hereunder.

150-36.4 Enforcement Officers.

The Health Officer, the Zoning Officer, the Sanitarian, appointed Fire Inspectors and the Police Department are hereby designated enforcement officers of this section with full power to make complaints and issue summonses for violations. The designation herein contained shall not limit the capacity or authority of any person or officer authorized to enforce this section or any similar ordinance under any other ordinance or law.

150-36.5 Compliance With Notice; Lien.

If the person in charge shall fail to remove the brush, weeds, dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash, debris or other articles within the time required by the notice, then the enforcement officer may remove or cause or arrange for the removal of the articles. The officer causing the removal shall keep an accurate account of the cost thereof and shall certify the cost and expense to the Borough Committee, which shall examine the certification. If the Borough Committee shall find the same correct, the cost shall be charged against the lands upon which the articles are located and from which they were removed. A statement of the cost shall forthwith be furnished by the Borough Clerk to the Collector of Taxes, and the cost shall forthwith become a lien upon the lands where the violation existed and shall be added to, become and form part of the taxes next to be assessed and levied upon the lands, to bear interest at the same rate as taxes, and the lien shall be collected and enforced in the same manner as taxes, pursuant to the statutes governing the subject matter.

1. The enforcement officers designated in this Section shall be authorized to issue a notice to a Creditor that has filed a summons and complaint in an action to foreclose on a residential property within the Borough, if the enforcement officer determines that the Creditor has violated this Section by failing to provide for the care, maintenance, security, and upkeep of the exterior of a Vacant and Abandoned property.

Where a Creditor is an out-of-State Creditor, the notice shall be issued to the representative or agent that has been identified by the Creditor pursuant to this creditor.

2. The issuance of a notice pursuant to this Section shall constitute proof that a property is Vacant and Abandoned for the purposes of this Section.

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150-37 to 150-47 ARE RESERVED.

150-48 CONFLICT WITH OTHER PROVISIONS.

In any case where a provision of this code is found to be in conflict with or inconsistent with a provision of any other ordinance or code of this municipality which establishes a lower standard for the promotion and protection of the safety, health and welfare of the people, the provisions of this code shall prevail, and such other ordinances or codes or parts thereof are hereby declared to be repealed to the extent that they may be so found to be in conflict with this code.

 Anthony DeLuca, Jr., Mayor

INTRODUCTION						COUNCILPERSON	FINAL ADOPTION					
Moved	Sec.	Aye	Nay	Abs.	NP		Moved	Sec.	Aye	Nay	Abs.	NP
X		X				KAY CECERI		X	X			
	X	X				LAWRENCE CLEMENTI	X		X			
		X				PETER CORVELLI						X
		X				GERRY LAUDATI			X			
		X				NICHOLAS MASCARO			X			
					X	SCOTT PENTZ			X			
Introduced: June 22, 2016						I hereby certify the above ordinance was adopted by the Borough Council of the Borough of Kenilworth, County of Union, State of New Jersey on the aforementioned date.						
Final Adoption: July 13, 2016												
						_____ Laura Reinertsen, Borough Clerk						