

**BOROUGH OF NORTH PLAINFIELD
COUNTY OF SOMERSET
STATE OF NEW JERSEY**

ORDINANCE NO. 23-07

AN ORDINANCE TO AMEND, REVISE AND SUPPLEMENT CHAPTER 11 OF THE BOROUGH CODE, ENTITLED "PROPERTY MAINTENANCE", MOST NOTABLY ARTICLE V, ENTITLED "REGISTRATION OF VACANT PROPERTY," AND, MORE SPECIFICALLY, BY DELETING THE EXISTING § 11-13, ENTITLED "VACANT PROPERTY REGISTRATION" AND REPLACING IT WITH A NEW § 11-13, ENTITLED "VACANT PROPERTY REGISTRATION" AND A NEW § 11-14, ENTITLED "REGISTRATION OF PROPERTY IN FORECLOSURE REQUIRED; VACANT PROPERTY IN FORECLOSURE"

WHEREAS, pursuant to *N.J.S.A. 40:48-1* and *N.J.S.A. 40:48-2*, the governing body of a municipality may make, amend, repeal and enforce such ordinances, regulations, rules and by-laws not contrary to the laws of this State and/or of the United States, as it may deem necessary and proper for the good of government, order, and protection of person and property and for the preservation of the public health, safety and welfare of the municipality and its inhabitants and, as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any other law; and,

WHEREAS, this grant of authority includes the power to adopt reasonable ordinances for the regulation of vacant and abandoned properties pursuant to *N.J.S.A. 55:19-81* and/or a nuisance, pursuant to *N.J.S.A. 55:19-82* and/or *N.J.S.A. 40:48-2.3*; and,

WHEREAS, this grant of authority includes the power to adopt reasonable ordinances for the regulation of vacant properties in foreclosure, pursuant to *N.J.S.A. 40:48-2.12s(2)* and *N.J.S.A. 40:48-2.12s(3)*; and,

WHEREAS, the Borough Council finds it necessary and appropriate to amend, revise and supplement Chapter 11 of the Borough Code, entitled "Property Maintenance," specifically Article V, entitled "Vacant Property Registration," to amend, revise and supplement said Chapter as to vacant and abandoned properties, pursuant to *N.J.S.A. 55:19-81* and/or a nuisance, pursuant to *N.J.S.A. 55:19-82* and/or *N.J.S.A. 40:48-2.3* and to incorporate and enact an Ordinance regarding vacant properties in foreclosure pursuant to new State legislation, *N.J.S.A. 40:48-2.12s(2)* and *N.J.S.A. 40:48-2.12s(3)*.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of North Plainfield, County of Somerset, State of New Jersey that the Borough Code of the Borough of North Plainfield be amended, revised and supplemented as to Chapter 11 of the Borough Code,

entitled "Property Maintenance", most notably Article V, entitled "Registration of Vacant Property," and, more specifically, by deleting § 11-13, entitled "Vacant Property Registration," and adding a new § 11-13, entitled "Vacant Property Registration," and a new § 11-14, entitled "Registration of Property in Foreclosure Required; Vacant Property in Foreclosure," as follows:

§ 11-13, entitled "Vacant Property Registration," is hereby deleted in its entirety.

New § 11-13, entitled "Vacant Property Registration," is hereby adopted as follows:

§ 11-13, Vacant Property Registration

§ 11-13.1 Definitions.

Creditor shall mean a Lienholder, Mortgage Holder or Mortgagee including, but not limited to, service companies, lenders 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 a mortgage agreement. Creditor shall also mean a State-chartered bank, savings bank, savings and loan association or credit union, any person required to be licensed under the provisions of the "New Jersey Residential Mortgage Lending Act," Article V §1 through 39 of P.L.2009, c. 53 (C.17:11C-51 through C.17:11C-89), and any entity acting on behalf of the creditor named in the debt obligation including, but not limited to, servicers. For purposes of this Article V, a creditor shall not include the State, a political subdivision of the State, or a State, county, or local government entity, or their agent or assignee, such as the servicer.

Days shall mean consecutive calendar days.

Evidence of Vacancy shall mean any condition, readily apparent to the Public Official (as defined below) from an exterior visual inspection, which on its own or combined with other conditions present on or concerning the Property, would lead a reasonable person to believe a Property is vacant. A Property shall be considered vacant and abandoned if it is not legally occupied by a mortgagor or tenant, which is in such condition that it cannot be legally reoccupied, because of the presence or finding of at least two (2) of the following:

- 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, delivery persons, or government employees indicating that the property 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;
- K. A risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners 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 a mortgagor expressing the clear intent of all mortgagors to abandon the Property; or,
- O. Any other reasonable indicia of abandonment.

Foreclosure shall mean the process by which Property, placed as security for a real estate or other loans, is prepared for sale to satisfy the debt if the borrower is in default under the terms of the loan including, but not limited to the filing of a notice of lis pendens.

Initiation of Foreclosure Process shall mean any of the following actions taken by a lienholder and/or mortgage holder and/or mortgagee:

- A. Taking possession of the property, whether by agreement or deed in lieu of foreclosure.
- B. Delivering a creditor's or mortgagee's notice of intention to foreclose to the borrower.
- C. Commencing a foreclosure action or filing a lis pendens in the Superior Court of New Jersey.

Lienholder or Mortgage Holder or Mortgagee shall mean a creditor including, but not limited to service companies, lenders 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 a mortgage agreement. Collectively herein referred to as "creditor."

Owner shall mean every person, entity, service company, property manager and/or real estate agency, who alone or severally with others:

- A. Has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise; or,
- B. Has care, charge or control of any dwelling, dwelling unit or parcel of land, vacant or otherwise, in any capacity, including but not limited to agency, executor, executrix, administrator, trustee or guardian, of the estate of the holder of legal title; or,
- C. Is a mortgagee in possession of any such property; or,
- D. Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or,
- E. Is an officer or trustee of the association of unit owners of the condominium. Each such person is bound to comply as if he were the owner; or,
- F. Every person who operates a rooming house; or,
- G. Is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process.

Property shall mean any residential real estate, residential property and/or any portion thereof, which is located in the Borough of North Plainfield, including all buildings and/or structures situated on the Property. For the purpose of Chapter 11, Article V only, "Property" does not include property owned or subject to the control of the Borough or any of its governmental bodies or agencies or other governmental bodies or agencies.

Public Official shall mean the Zoning Officer, Assistant Zoning Officer, Property Maintenance Officer, Property Maintenance Inspector and/or their designee, as designated in writing by the Mayor.

Residential Property shall mean any property that contains one (1) or more dwelling units used occupied, intended to be occupied and/or designed to be occupied for living purposes.

Securing shall mean taking measures that assist in making the property inaccessible to unauthorized persons.

Vacant Property shall mean:

- A. Any residential or non-residential building, or a building which contains both residential and non-residential space which is not legally occupied or in or on which substantially all lawful construction operations or residential occupancy has ceased, or that is in such condition that it cannot legally be reoccupied without repair or rehabilitation, or shows evidence of vacancy as determined by the public official in accordance with the criteria set forth in § 11-13.1 as Evidence of Vacancy.
- B. Any Property determined by the public official to be "abandoned property", in accordance with the meaning of such term in the Abandoned Properties Rehabilitation Act, *N.J.S.A.*

55:19-81 shall also be deemed to be vacant property for the purpose of this Article. Property determined to be “nuisance property”, in accordance with the meaning of such term in the Abandoned Properties Rehabilitation Act, *N.J.S.A. 55:19-82*, shall also be deemed to be vacant property for the purpose of this Article.

C. Any property which contains both residential and non-residential space may be considered vacant so long as the non-residential space and at least one (1) apartment in the building was previously legally occupied as residential space and which has not been legally occupied for at least six (6) months and is determined to be vacant and/or abandoned by the Public Official and the Property otherwise meets the criteria of either a vacant, abandoned or nuisance property as set forth in this Ordinance.

D. A Property may be determined to be vacant and/or abandoned under this Article V if the public official determines that the property is abandoned, pursuant to *N.J.S.A. 55:19-81* and/or a nuisance, pursuant to *N.J.S.A. 55:19-82* or *N.J.S.A. 40:48-2.3*.

§ 11-13.2 Registration of Vacant Properties Required

The Owner of any vacant property, as defined herein, within ten (10) calendar days after the property becomes vacant property or within thirty (30) calendar days after assuming ownership of the vacant property, whichever is sooner, shall file a registration statement for each such vacant property with the Public Official on forms provided by the Borough of North Plainfield for such purposes. The Owner shall be required to renew the registration annually on the first (1st) day of January, 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.

§ 11-13.3 Responsibilities of Owner

Unless expressly provided to the contrary in this Chapter 11, Article V, the respective obligations and responsibilities of the owner, operator and occupant under this Section shall not be altered or affected by any agreement or contract by and between any of the aforesaid or between them and other parties. The owner shall be primarily responsible for complying with the provisions of this Chapter; however, nothing herein shall prevent the Public Official from issuing a notice pursuant to § 11-13.4 to the Owner or a notice pursuant to § 11-13.6 to the creditor, operator or occupant in addition to the Owner. The Owner or creditor shall be responsible for any failure of the operator or occupant to discharge a duty imposed upon the operator or occupant by this Code.

§ 11-13.4 Notice by Public Officer to Owner

The Public Officer designated or appointed pursuant to P.L. 1942, c. 112 (C.40:48-2.3 et seq.) may issue a notice to the owner if the Public Official or other authorized municipal official determines that the owner has violated any Section of this Chapter 11, Article V, that the Property has become vacant and/or abandoned, or is declared to be a nuisance which is a risk of imminent danger. In the case of any violation of this Chapter for failure to provide care, maintenance, security, and upkeep of the exterior of vacant and abandoned property, such notice shall require the person or

entity to correct the violation within thirty (30) calendar days of receipt of the notice, or within ten (10) calendar days of receipt of the notice if the violation presents an imminent threat to public health and safety.

§ 11-13.5 Fee for Property Declared to be Vacant

The Owner of a Property registered as vacant and/or abandoned, or declared to be a nuisance which is a risk of imminent danger, or which is ordered by the Public Official to be vacant and/or abandoned, or declared to be a nuisance which is a risk of imminent danger shall pay an annual fee of Two Thousand Dollars (\$2,000.00) to the Borough of North Plainfield. The Borough may contract with a private company to collect, maintain and pay over such fees in accordance with the requirements of *N.J.S.A. 40:48-2.12S(3)* and *N.J.S.A. 40A:11-1, et seq.*

§ 11-13.6 Obligation of Owner to Secure Vacant Property

An owner of vacant and/or abandoned property, upon receiving a notice from the public officer, pursuant to § 11-13.4 of this Article that the Property has been declared to be vacant and/or abandoned, shall comply with the following requirements:

1. The Owner shall secure the property against unauthorized entry.
2. The Owner shall post a sign affixed to the inside of the property and visible to the public indicating the name, address, and telephone number of the Owner or the Owner's representative for the purpose of receiving service of process.
3. The Owner shall acquire and otherwise maintain liability insurance by procuring a vacancy policy, covering any damage to any person or any property caused by any physical condition of the property while registered with the property registration program.
4. The Owner shall notify the Public Official within thirty (30) calendar days of any change in the registration information by filing an amended registration statement on a form provided by the Public Official for such purposes.
5. The registration statement shall be deemed prima facie proof of the statements therein contained and any administrative enforcement proceeding or court proceeding instituted by the Borough against the Owner or creditor of the building shall use the registration statement as prima facie proof.
6. A Property shall be removed from the registration list of vacant properties only upon the issuance of a certificate of occupancy or a rental certificate of occupancy by the Borough of North Plainfield.
7. An owner or lienholder of any property which is added to the vacant property list may challenge the inclusion of their property on the vacant property list by filing an appeal

with the public official in accordance with the procedures set forth in the Abandoned Properties Act, *N.J.S.A. 55:19-55(e-f)*.

New § 11-14, entitled “Registration of Property in Foreclosure Required; Vacant Property in Foreclosure,” is hereby adopted as follows:

§ 11-14 Registration of Property in Foreclosure Required; Vacant Property in Foreclosure

§ 11-14.1 Creditor to Register Property in Foreclosure in Addition to Notice.

A creditor filing a summons and complaint in an action to foreclose in compliance with *N.J.S.A. 40:48-2.12s(2)* shall, in addition to the notice provided to the Borough of North Plainfield pursuant to Article V, §17 of *P.L.2008, c. 127 (C.46:10B-51)* or Article V, §2 of *P.L.2021, c. 444 (C.40:48-2.12s2)*, register the residential or commercial property with the Borough's property registration program as a property in foreclosure on a form provided by the Borough Clerk.

§ 11-14.2 Contents of Registration Form

- A. The information provided in the registration form shall contain the full name, address, and telephone number for the representative of the creditor who is responsible for receiving complaints of property maintenance and code violations and the full name and contact information for any person or entity retained by the creditor or a representative of the creditor to be responsible for any care, maintenance, security, or upkeep of the Property.
- B. The information provided in the registration form shall also include the street address, lot, and block number of the property. The notice may contain information about more than one property, if the has initiated a foreclosure proceeding on any residential property prior to the effective date of this Ordinance that is pending in Superior Court.
- C. Information provided in the registration form may be provided by mail and/or electronic communication, at the discretion of the Borough Clerk.
- D. In the event that a summons and complaint in an action to foreclose on any Property has been served by a creditor which is located out-of-State, the information provided in the registration form shall also contain the full name, address, and telephone number 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.
- E. The Borough Clerk shall forward a copy of the registration form to the Public Official or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.
- F. If there is any change in the name, address and/or telephone number for a representative, agent, or individual authorized to accept service on behalf of a creditor required to be provided in a notice pursuant to this paragraph following the filing of the summons and

complaint, the creditor shall provide a notice to the Borough Clerk containing the updated name, address, or telephone number within ten (10) calendar days of the change in that information.

G. In the event that the Property being foreclosed on is an affordable housing unit pursuant to the Fair Housing Act, then the creditor shall identify that the Property is subject to the Fair Housing Act.

§ 11-14.3 Creditor Responsible for Care, Maintenance, Security and Upkeep of Property

Any creditor who has filed a summons and complaint in an action to foreclose any property within the Borough of North Plainfield shall be responsible for the care, maintenance, security, and upkeep of the exterior of the Property if the Property is or becomes vacant or abandoned, as defined in § 11-13.1, at any time while the Property is registered with the property registration program set forth in this Section. The creditor shall identify any requirements that the Borough imposes on the creditor filing a summons and complaint in an action to foreclose on a property, that is or becomes vacant and abandoned, relating to the care, maintenance, security, and upkeep of the exterior of the Property, including, but not limited to, any requirements to secure the Property against unauthorized entry, post a sign affixed to the inside of the Property and visible to the public indicating the name, address, and telephone number of the creditor or an out-of-State creditor's in-State representative or agent for the purpose of receiving service of process, or acquire and otherwise maintain liability insurance by procuring a vacancy policy, covering any damage to any person or any property caused by any physical condition of the Property while registered with the property registration program;

§ 11-14.4 Public Officer to Issue Notice to Creditor

The Public Official or any other official responsible for administration of the municipal property maintenance or public nuisance code shall have the authority 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 any provisions of Borough Code § 11-13.1 through § 11-14.6. In the case of a violation for failure to provide care, maintenance, security, and upkeep of the exterior of vacant and abandoned property, such notice shall require the person or entity to correct the violation within thirty (30) calendar days of receipt of the notice, or within ten (10) calendar days of receipt of the notice if the violation presents an imminent threat to public health and safety.

§ 11-14.5 Obligation of Creditor to Update Information is On-Going.

After the creditor files notice of foreclosure with the Borough, if the registered property becomes vacant and abandoned in accordance with the definition in Borough Code § 11-13.1 after the Property is initially registered with the Borough, the creditor shall update the property registration with the Borough to reflect the change in the property's status;

§ 11-14.6 Fee for Registration; Additional Fee for Vacant or Abandoned Property in Foreclosure

There is an annual fee on a creditor required to register a property upon notice of foreclosure being filed with the Borough. The fee shall be:

- A. Five Hundred Dollars (\$500) per property annually for any property that is required to be registered because a summons and complaint in an action to foreclose was filed by the creditor; and,
- B. An additional Two Thousand Dollars (\$2,000) per property annually if the Property is declared to be vacant and/or abandoned pursuant to Borough Code § 11-13.1 when the summons and complaint in an action to foreclose is filed, or becomes vacant and abandoned pursuant to the definition set forth in Borough Code § 11-13.1 above at any time thereafter while the property is in foreclosure.

§ 11-14.6 Violations and Penalties.

- A. Any owner or creditor who is not in full compliance with Chapter 11, Article V, or who otherwise violates any provision of Chapter 11, Article V, shall be subject to a fine of not less than Three Hundred Dollars (\$300) and not more than One Thousand Five Hundred Dollars (\$1,500) for each offense. Every day that a violation continues shall constitute a separate and distinct offense. Fines assessed under this Article V shall be recoverable from the owner or creditor, as the case may be, and shall be a lien on the Property.
- B. For purposes of Chapter 11, Article V, failure to file a registration statement in a timely manner, failure to provide correct information on the registration statement and/or failure to comply with the provisions of any portion of Chapter 11, Article V, shall be deemed to be a violation of this Article V and the provisions of paragraph A above shall fully apply.
- C. Nothing in Chapter 11, Article V is intended, nor shall be read, to conflict or prevent the Borough of North Plainfield from taking action against buildings or property found to be unfit for human habitation or unsafe structures as provided in the applicable provisions of the Borough Code of the Borough of North Plainfield and/or under the laws of the State of New Jersey.

NOW, THEREFORE, BE IT FURTHER ORDAINED that this Ordinance shall take effect, after final passage, twenty (20) days following action or inaction by the Mayor as provided by law or an override of a mayoral veto by the Council, whichever is applicable and publication in accordance with law, unless a resolution is adopted, pursuant to *N.J.S.A. 40:69A-181(b)*, declaring an emergency and providing that this Ordinance shall take effect at an earlier date.

INTRODUCED: May 8, 2023
PASSED: May 8, 2023
PUBLISHED: May 14, 2023
ADOPTED: May 22, 2023
ROLL CALL: AYES: Corzo, Given, Merrill, Miller, Schaefer, Stabile
NAYS:
ABSTAIN:
ABSENT: McIntyre


APPROVED BY THE MAYOR: Yes No _____

The above is a true copy of the Ordinance adopted by the Borough of North Plainfield on May 22, 2023.

ATTEST:

BOROUGH OF NORTH PLAINFIELD





Frank A. "Skip" Stabile, Jr., Council President

Michele Irby-Garry
Acting Borough Clerk
Borough of North Plainfield

Date signed: May 22, 2023

Date signed: May 22, 2023.


Lawrence LaRonde, Mayor

Date signed: May 22, 2023.