

REQUESTED BY:
LARSON-NOVAK -BROWN

LAW DEPARTMENT
DRAFT NO. 3706

TITLE

AN ORDINANCE FOR THE PURPOSE OF AMENDING SECTION 1338.02(A) OF CHAPTER 1338 ("VACANT PROPERTY REGISTRY") OF THE CODIFIED ORDINANCES OF THE CITY OF WARREN, AND DECLARING AN EMERGENCY.

ORDINANCE NO. 12738/17

WHEREAS, the City of Warren finds that the current fees as established in Section 1338.02 of Chapter 1338 ("Vacant Property Registry") of the Codified Ordinances of the City of Warren are insufficient to cover the costs of administration of this Ordinance; and

WHEREAS, this Council deems it to be in the best interests of the City of Warren to increase the fees so that they cover the cost of administration; and

WHEREAS, the City of Warren finds that is reasonable to increase the fee for residential foreclosure from One Hundred Dollars (\$100.00) to Two Hundred Dollars (\$200.00), as residential foreclosures encompass the majority of all foreclosures and increase the fee for commercial foreclosures from Two Hundred Fifty Dollars (\$250.00) to Three Hundred Dollars (\$300.00); and

WHEREAS, the City of Warren finds that this Ordinance is necessary to increase these fees to correctly reflect the cost of administration of the Ordinance and avoid increase expenses to the City of Warren; and

WHEREAS, the City of Warren is empowered to promote the health, safety and welfare and integrity of the residents of the City of Warren, and others; and

WHEREAS, this ordinance is necessary to promote and protect public health, safety, and welfare; NOW THEREFORE

BE IT ORDAINED by the Council of the City of Warren, State of Ohio:

Section 1: That Section 1338.02(a) of Chapter 1338 ("Vacant Property Registry"), and the various sections thereof, be, and the same hereby are, amended to and within the Property Maintenance Code of the Codified Ordinances of the City of Warren as follows:

**"CHAPTER 1338
VACANT PROPERTY REGISTRY**

CROSS REFERENCES

Notice to City of Foreclosure Filing – see ADMINISTRATIVE AND ENFORCMENT 1367.22
Yard Area Maintenance – see PROPERTY MAINTENANCE 1337.09
Street Numbers – see PROPERTY MAINTENANCE 1337.17
Abandoned Structures and Unoccupied Lots – See PROPERTY MAINTENANCE 1337.53
Appeals – See BUILDING ADMINISTRATION AND CONSTRUCTION STANDARDS 1311
Penalty- See PROPERTY MAINTENANCE CODE 1343

1338.01 DEFINITIONS.

For the purpose of this chapter, the following words are defined and shall have the meaning ascribed to them as hereafter set forth:

"Abandoned" means a structure that is unoccupied as the result of relinquishment of possession or control by an owner or other person with the right of possession or control of the structure, a mortgagor or the mortgagor's assigns whether or not the mortgagor or mortgagor's assigns have relinquished equity and title. A structure may be deemed abandoned when there is evidence of conditions, taken separately or as a whole, that would lead a reasonable person to conclude that the property was abandoned, including, but not limited to, evidence of overgrown or dead vegetation, accumulation of newspapers, circulars, flyers, mail, past due utility notices, or other means of notice by publication, the accumulation of junk, litter, trash, or debris, absence of windows or window treatments, absence of furnishings and personal items, statements of neighbors, delivery agents or similarly situated persons that the property is abandoned.

"Code Official" means the individual or entity designated by the Director of Safety and Service to carry out the duties prescribed by this Chapter.

"Codes" means the Codified Ordinances of the City of Warren or those adopted by said Codified Ordinances.

"Inspector" means a person employed by or under contract to the City of Warren to perform inspections to determine compliance with Codes and to order corrective measures and/or initiate administrative, civil, or criminal proceedings.

"Vacant" means a structure that is not lawfully occupied or that otherwise qualifies as "Abandoned" under this Section. Multifamily residential structures shall be considered vacant when substantially all of the dwelling units are not lawfully occupied or that otherwise qualifies as "Abandoned" under this Section. Commercial structures shall be considered vacant when all commercial activity has ceased at the site or that otherwise qualifies as "Abandoned" under this Section. Multi-tenant commercial structures shall be considered vacant when substantially all of the units are not lawfully occupied or engaging in commercial activity, or that otherwise qualifies as "Abandoned" under this Section. Industrial structures shall be considered abandoned when all industrial or manufacturing activity has ceased at the site or that otherwise qualifies as "Abandoned" under this Section. Multi-tenant industrial structures shall be considered vacant when substantially all of the units are not lawfully occupied or engaging in industrial or manufacturing activity, or that otherwise qualifies as "Abandoned" under this Chapter.

In determining whether a structure is vacant, it is also relevant to consider, among other factors, the percentage of the overall square footage of the building or floor not in use to the occupied space; the condition and value of any items in the structure and the presence of rental or for sale signs on the property.

A property that is temporarily unoccupied and is in the process of being renovated under proper and unexpired permits shall not be considered vacant.

A property that is listed for sale with a licensed realtor under a fully executed listing agreement shall not be considered vacant for the first six months of the listing agreement under which the property was first listed for sale. Such property shall be considered vacant for purposes of this Section upon the expiration of the first six month period for which it is first listed for sale or upon a subsequent re-listing with the same or a different licensed realtor. Unoccupied property listed as "For Sale by Owner" shall be considered vacant for purposes of this Section.

"Owner" means the registered owner of a property, any person who holds legal or equitable title to the property, is a mortgagee, a vendee-in-possession, assignee of rents, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a property. The Owner of a property in default or for which a foreclosure action is pending or for which a judgment in foreclosure has been issued shall include the mortgagee, the successor in interest to the mortgagee, the lender or servicing company and any agent acting for the mortgagee, its successors, or a lender or servicing company. Under this definition, there may be more than one "Owner" of a property for purposes of this Chapter.

"Secure" means a covering shall be placed over all doors and windows which are within fifteen feet of the exterior grade, consisting of one-half inch thick plywood attached to the framing of all such doors and windows by wood screws of a minimum length of one and one-half inches, placed twelve inches on center. Such plywood shall be painted with a minimum of two coats of oil-based exterior paint. In order to be considered Secure, a property must also be in compliance with all requirements of the Warren Property Maintenance Code.

1338.02 OWNER REQUIRED TO ACT; ENFORCEMENT AUTHORITY.

(a) The owner of any structure that has become vacant as defined in Section 1338.01 shall, within thirty (30) days after the structure first becomes vacant, within thirty (30) days of receiving notice that a structure is vacant, or within thirty (30) days after the effective date of this Chapter, whichever is later, file a registration statement for each such structure with the Code Official or his or her designee on forms provided for such purposes. Any Owner of a property which files a foreclosure action against said property, or for which a foreclosure action is pending, or a judgment of foreclosure has been issued shall, in addition to all other requirements of this Section, provide a cash bond acceptable to the Director of Safety and Service or his designee, in the sum of not less than Ten Thousand Dollars (\$10,000.00), to secure the continued maintenance of the property throughout its vacancy and remunerate the City of Warren for any expenses incurred in inspecting, securing, repairing, marking and/or making such building safe by any legal means including, but not limited to, demolition. A portion of said bond in an amount to be determined by the Director of Safety and Service shall be retained by the City of Warren as an administrative fee to fund an account for expenses incurred in inspecting, securing, repairing and/or marking said building and other buildings which are involved in the foreclosure process or vacant.

The registration statement shall remain valid for one year from the date of registration. The registering party is not required to pay the applicable registration fee at such time as the initial registration fee is filed. However, the registering party shall be required to annually renew the registration as long as the structure remains vacant and shall pay an annual registration fee of two hundred dollars (\$200.00) for each residential structure and three hundred dollars (\$300.00) for each commercial or industrial structure subject to the conditions set out in 1338.02(a)(1); provided, however, that all religious, educational, benevolent or charitable associations, all governmental agencies shall be exempt from the payment of the annual registration fee.

- (1) The registering party may avoid the annual registration fee and any additional registration non-compliance fees if the following conditions are met:
 - (A) The property is secured, which includes all doors and windows, in accordance with this Chapter; and
 - (B) The property is free of trash and debris; and
 - (C) The lawn is properly maintained, in accordance with Section 1337.09 (YARD AREA MAINTENANCE) of the Codified Ordinances of the City of Warren; and
 - (D) The property address is clearly visible, in accordance with Section 1337.17 (STREET NUMBERS) of the Codified Ordinances of the City of Warren; and
 - (E) The registering party is in compliance with all terms and conditions mandated by this Chapter.

- (2) If the annual registration fee is subject to being waived, the registering party is still required to register the property in accordance with this Chapter or is subject to non-compliance penalties as stated in section 1338.99 (PENALTY).
- (3) If the owner of any vacant structure fails to file the required registration statement, such owner will be subject to non-compliance penalties provided by this Chapter, the applicable annual registration fee.

The owner shall notify the Code Official or his or her designee within twenty (20) days of any change in the registration information by filing an amended registration statement on a form provided for such purposes. 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 City of Warren against the owner of the structure. An owner shall be liable under this Section for failing to register a vacant structure, paying an appropriate annual registration fee, or timely updating any change in registration.

(b) In addition to other information required by the Code Official, the registration statement shall include the name, street address and telephone number of a natural person twenty-one years of age or older, designated by the owner 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 in connection with the enforcement of this Chapter. This person must maintain an office in Trumbull County, Ohio, or must actually reside within Trumbull County, Ohio. An owner who is a natural person and who meets the requirements of this subsection as to location of residence or office may designate him- or herself as agent.

By designating an authorized agent under the provisions of this subsection the owner is consenting to receive any and all notices of code violations concerning the registered building and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the registered structure by service of the notice or process on the authorized agent. Any owner who has designated an authorized agent under the provisions of this subsection shall be deemed to consent to the continuation of the agent's designation for the purposes of this subsection until the owner notifies the Code Official or his or her designee in writing of a change of authorized agent or until the owner files a new annual registration statement. An owner shall be liable under this Section for failing to register an authorized agent.

(c) The owner of any vacant structure shall, within fifteen (15) days of registering a vacant structure, cause a physical inspection of the structure to be made, and if directed by the Building Official conducting such inspection, shall secure the structure in accordance with this Chapter. Photographs shall be taken of the property that accurately portrays the condition of the structure. Photographs shall be dated and preserved. An owner shall be liable under this Section for failing to inspect the property or structure or for failing to maintain the inspection photographs as required by this Section.

(d) Any owner who fails to register a vacant structure under the provisions of this subsection shall further be deemed to consent to receive, by posting at the structure, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the structure and premises.

(e) The Code Official may issue rules and regulations for the administration of this Section. These rules may designate board-up materials and methods which must be used when securing a structure beyond the standards provided so that the boarding is reasonably incapable of being removed by trespassers or others acting without the owner's consent.

1338.03 REGISTRATION REQUIRED.

The owner of any vacant structure shall file a registration statement for each such structure with the Code Official or his or her designee on forms provided for such purposes. Any such registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the City against the owner or owners of the structure.

1338.04 VIOLATIONS.**(a) Liability.**

- (1) Unless otherwise specifically provided, the owner, the owner's agent for the purpose of managing, controlling or collecting rents, and any other person managing or controlling a structure or premises in any part of which there is a violation of the provisions of this Chapter, shall be liable for any violation therein, existing or occurring, or which may have existed or occurred, at or during any time when such person is was the person owning or managing, controlling, or acting as an agent in regard to said structure or premises and is subject to injunctions, abatement orders or other remedial orders.
- (2) The liabilities and obligations hereunder imposed on an owner shall attach to a trustee under a land trust holding title to such building, structure or premises without the right of possession, management or control, unless said trustee in a proceeding under said provisions of this Chapter discloses in a verified pleading or in an affidavit filed with the court, the name and last known address of each person who was a beneficiary of the trust at the time of the alleged violation and of each person, if any, who was then acting as agent for the purpose of managing, controlling or collecting rents, as the same may appear on the records of the trust.
- (3) The liabilities and obligations imposed on an owner shall attach to any financial institution, mortgage company, or any other person or entity with or without an interest in the structure or premises knowingly takes any action in any judicial or administrative proceeding that is intended to delay issuance or enforcement of any remedy for any violation of the Codified Ordinances for the City of Warren, provided that with respect to fines such person shall be liable only for fines which accrue on or after the date of such action and further provided that no liability shall be imposed under this section for any action taken in any proceeding, including a proceeding to foreclose on a lien, that does not delay or prevent the prosecution of any action brought by the City of Warren to enforce the adopted Codes.
- (4) In the event the City of Warren, due to lack of response of an owner or agent, is required to take action, through its own efforts or via a contract for such services, to abate a nuisance at a vacant property, the owner will be billed for the cost of the abatement to include all labor and materials needed to correct the violation, in accordance with Section 1337.53

(ABANDONED STRUCTURES AND UNOCCUPIED LOTS). Nuisance abatements shall include, but are not be limited to, elimination of hazardous conditions, cutting of weeds and overgrowth, securing and/or boarding of a structure, trash cleanup and disposal and demolition.

(b) Appeals. Appeals shall be processed in accordance with Chapter 1311 of the Building Code of the Codified Ordinances of the City of Warren.

(c) Assignment of registration fees, penalties, and fines. Registration fees, penalties, and fines associated with and collected on behalf of vacant property registration shall be deposited in a specific account designated by the auditors office in the annual budget of the City of Warren and shall only be expended for the specific purposes set forth in this Chapter.

(d) Severability. If any section, subsection, clauses, phrase or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

(e) Savings clause. The repeal or amendment herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending litigation or prosecution of any right established or occurring prior to the effective date of this ordinance, as amended.

(f) Publication. The Clerk for the City of Warren shall cause this section to be published in the manner required by law.

(g) Appropriation of fees collected. All fees collected shall be paid into the treasury of the City of Warren and shall in turn be certified by the Auditor and appropriated by City Council for the enforcement of this Chapter.

1338.99 PENALTY.

(a) The owner of any vacant structure who fails to file a registration statement for each such structure within the timeframes established by this Chapter or who fails to update a change in registration information within the timeframes established by this Chapter shall be subject to a fifty dollar (\$50.00) per day administrative penalty with a maximum penalty of one thousand dollars (\$1,000.00).

(b) Notwithstanding any other language in this Chapter and unless otherwise specified, any person who violates any provision of this Chapter or of the rules and regulations issued hereunder and fails to maintain the property according to the Building Code of the Codified Ordinances of the City of Warren shall be guilty of a first degree misdemeanor and, upon conviction, shall be fined not less than two hundred dollars (\$200.00) for each offense. Every day that a violation continues shall constitute a separate and distinct offense."

Section 2: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety, and for the further reason that the integrity of the environment of the City of Warren may be more fully insured at the earliest possible time without undue delay.

WHEREFORE, this Ordinance shall go into immediate effect.

Passed in Council this 13TH day of September, 2017.

SIGNED:  PRESIDENT OF COUNCIL ATTEST:  CLERK

FILED WITH THE MAYOR: 9-13-17

DATE APPROVED: 9-13-17


MAYOR, CITY OF WARREN, OHIO