

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

ORDINANCE

An Ordinance Amending the "Code of Ordinances City of Lowell, Massachusetts," as amended, Chapter 5 thereof entitled "Buildings and Building Regulations," by adding a new section entitled "Vacant and Foreclosing Property."

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"The Code of Ordinances City of Lowell, Massachusetts" hereinafter called the "Code," adopted by the City Council on April 26, 1988, as subsequently amended, hereinafter called the Lowell City Code, is hereby further amended with respect to Chapter 5 thereof entitled "Buildings and Building Regulations," by adding new sections 5-121 through 5-131 entitled "Vacant and Foreclosing Property" as follows:

**“Sec. 5-121 Purpose**

It is the intent of this section to protect and preserve public safety, security, and quiet enjoyment of occupants, abutters, and neighborhoods by (i) requiring all residential, commercial, and industrial property owners, including lenders, trustees, and service companies, to properly maintain vacant and/or foreclosing properties and (ii) regulating the maintenance of vacant and/or foreclosing, residential, commercial, and industrial properties to prevent blighted and unsecured properties.

The Building Commissioner, pursuant to M.G.L. c. 143, s. 3, the State Building Code, and the City of Lowell Zoning Ordinance, is hereby designated as the enforcement authority.

**Sec. 5-122 Definitions**

When used in this section, unless a contrary intention clearly appears, the following terms shall have the following meanings:

*City* means City of Lowell.

*Commissioner* means Building Commissioner.

*Days* mean consecutive calendar days.

*Foreclosing* means the process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

*Initiation of the foreclosure process* means taking any of the following actions: (i) Taking possession of a residential, commercial, or industrial property pursuant to M.G. L. c. 244, s 1; or (ii) delivering the Mortgagee's notice of intention to foreclose to the borrower pursuant to M.G. L. c. 244, s. 17B; or (iii) commencing a foreclosure action on a property in either the Land Court or Middlesex Superior Court.

*Local* means within twenty (20) driving miles of the property in question.

*Mortgagee* means the 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 the mortgage agreement.

*Owner* means every person, entity, service company, property manager or real estate broker, who alone or severally with others has legal or equitable title to any property; or has care, charge or control of any property, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or is a mortgagee in possession of any such property; or is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, this ordinance shall not apply to a condominium association created pursuant to M.G.L. c. 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association. Owner also means every person who operates a rooming house; or is a trustee who holds, owns or controls mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process.

*Property* means any real residential, commercial, or industrial property, or portion thereof, located in the City of Lowell, including buildings or structures situated on the property. For purposes of this section, property does not include property owned or subject to the control of the City or any of its governmental bodies.

*Securing* means measures that assist in making the property inaccessible to unauthorized persons.

*Vacant* means any property not currently legally occupied.

**Sec. 5-123 Registration of Vacant and/or Foreclosing Property; Duty to Provide Written Notice of Vacant, Property and/or Mortgage Foreclosure.**

All owners shall register vacant and/or foreclosing residential, commercial, or industrial properties with the Building Commissioner on forms provided by the Commissioner. All registrations must state the owner's or agent's phone number and mailing address. The mailing address may not be a P.O. Box. This registration must also certify that the property was inspected by the owner or agent and identify whether the property is vacant at the time of filing. If the property is vacant, the owner or agent shall designate and retain a local individual or local property management company responsible for securing and maintaining

the property. This designation shall state the individual or company's name, phone number, and local mailing address. The mailing address may not be a P. O. Box. If the property is in the process of foreclosure, then the registration shall be filed within seven days of the initiation of the foreclosure process as defined in subsection 5-121 above. If the Commissioner determines that the property is vacant and that foreclosure proceedings have not been initiated, the registration must be received within fourteen days of the Commissioner's first citation for improper maintenance.

All property registrations are valid for one calendar year. An annual registration fee of one-hundred dollars and no cents (\$100.00) shall accompany the registration form. Subsequent annual registrations and fees are due at least thirty (30) days prior to the expiration of the previous registration and must certify whether the foreclosing and/or foreclosed property remains vacant.

Once the property is no longer vacant or is sold, the owner must provide proof of sale or written notice and proof of occupancy to the Building Commissioner.

#### **Sec. 5-124 Maintenance Requirements**

Properties subject to this section shall be maintained in accordance with the relevant Sanitary Codes, Building Codes, and local regulations concerning external and/or visible maintenance. The owner, local individual or local property management company shall inspect and maintain the property on a monthly basis for the duration of the vacancy.

The name and 24-hour contact phone number of the local individual or property management company responsible for maintenance shall be affixed to the property. This sign shall be posted on the front of the property so it is clearly visible from the street.

Adherence to this section does not relieve the owner of any applicable obligations set forth in City ordinances or regulations, Covenant Conditions and Restrictions, and/or Home Owners Association rules and regulations.

#### **Sec. 5-125 Inspections**

The Commissioner or designee shall have the authority and the duty to inspect properties subject to this section for compliance and to issue citations for any violations. The Commissioner or designee shall have the discretion to determine when and how such inspections are to be made, provided that such policies are reasonably calculated to ensure that this section is enforced.

#### **Sec. 5-126 Enforcement and Penalties**

Failure to register with the Commissioner shall be considered a violation of this ordinance and is punishable by a fine of up to three hundred dollars and no cents (\$300.00). Each week that such violation continues shall be considered a separate offense.

Failure to identify the local individual or local property management company shall be considered a violation of this ordinance and is punishable by a fine of up to three hundred dollars and no cents (\$300.00). Each week that such violation continues shall be considered a separate offense.

Failure to maintain the property shall be considered a violation of this ordinance and is punishable by a fine of up to three hundred dollars and no cents (\$300.00). Each week that such violation continues shall be considered a separate offense. Any expenses incurred by the City of Lowell relative to securing or maintaining property shall be recoverable by placing a lien on the property.

**Sec. 5-127 Appeal**

Any person aggrieved by the requirements of this section may seek an administrative appeal by making written application to the City Manager. The City Manager may designate a hearing officer to hear appeals pursuant to this section. Any person aggrieved by a final decision issued under this section by the City Manager may seek relief in any court of competent jurisdiction as provided by the laws of the Commonwealth.

**Sec. 5-128 Applicability**

If any provision of this section imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, by-law, order, or policy then the provisions of this section control.

**Sec. 5-129 Regulatory Authority**

The Building Commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this section.

**Sec. 5-130 Severability**

If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

**Sec. 5-131 Implementation**

The provisions of this section are effective immediately upon passage and all provisions shall be enforced immediately but no monetary fine shall be imposed pursuant hereto until ninety (90) days after passage.”

All provisions of the Code of the City of Lowell, as amended, which are consistent with this Ordinance shall continue in effect but all provisions of said Code inconsistent herewith are repealed.

This Ordinance shall take effect upon its passage in accordance with the provisions of Chapter 43 of the General Laws of the Commonwealth of Massachusetts, as amended.

APPROVED AS TO FORM:

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Christine P. O'Connor  
City Solicitor