

ORDINANCE NO. 14-36

AN ORDINANCE AMEND VOLUME I, CHAPTER XII OF THE CODE OF THE TOWNSHIP OF NEPTUNE BY ADDING SECTION 12-5 ENTITLED "VACANT AND ABANDONED PROPERTIES"

BE IT ORDAINED by the Township Committee of the Township of Neptune that Volume I, Chapter XII of Code of the Township of Neptune be and is hereby amended to add Section 12-5 entitled "VACANT AND ABANDONED PROPERTIES" as follows:

12-5 – VACANT AND ABANDONED PROPERTIES

12-5.1 – Findings, declaration relative to abandoned properties.

A) The Township Committee finds and declares that:

- 1) Abandoned properties, particularly those located within urban areas or in close proximity to occupied residences and businesses, create a wide range of problems for the communities in which they are located, fostering criminal activity, creating public health problems and otherwise diminishing the quality of life for residents and business operators in those areas.
- 2) Abandoned properties diminish the property values of neighboring properties and have a negative effect on the quality of life of adjacent property owners, increasing the risk of property damage through arson and vandalism and discouraging neighborhood stability and revitalization.
- 3) For these reasons, abandoned properties are presumptively considered to be nuisances, in view of their negative effects on nearby properties and the residents or users of those properties.
- 4) The continued presence of abandoned properties in New Jersey's communities acts as a significant barrier to urban revitalization and to the regeneration of the State's urban centers.
- 5) Abandonment is a local problem that must be addressed locally and the most important role of State government is to provide local governments, local community organizations, citizens, and residents with the tools to address the problem.
- 6) The responsibility of a property owner and in some cases the lienholder to maintain a property in sound condition and prevent it from becoming a nuisance to others extends to properties which are not in use and 'demolition by neglect', leading to the deterioration and loss of the property, or failure by an owner and in some cases the lienholder to comply with legitimate orders to demolish, stabilize or otherwise repair his or her or its property creates a presumption that the owner and in some cases the lienholder has abandoned the property.

- 7) Many abandoned buildings still have potential value for residential and other uses and such buildings should be preserved rather than demolished wherever feasible, particularly buildings that have historic or architectural value, or contribute to maintaining the character of neighborhoods or streetscapes, or both, as the case may be.

12-5.2 – Definitions relative to abandoned property, actions concerning repair, closing or demolition, and relating to this ordinance.

A) As used herein;

- 1) "Abandoned property" means any property that is determined to be abandoned pursuant to this Ordinance;
- 2) "Building" shall mean any building, or structure, or part thereof, whether used for human habitation or otherwise, and includes any outhouses, and appurtenances belonging thereto or usually enjoyed therewith.
- 3) "Department" means the New Jersey Department of Community Affairs.
- 4) "Lienholder" or "mortgage holder" means any person or entity holding a note, mortgage or other interest secured by the building or any part thereof.
- 5) "Municipality" means the Township of Neptune.
- 6) "Owner" means the holder or holders of title to an abandoned property.
- 7) "Parties in interest" shall mean all individuals, associations and corporations who have interests of record in building and any who are in actual possession thereof.
- 8) "Property" means any building or structure and the land appurtenant thereto.
- 9) "Public Authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning buildings in the municipality.
- 10) "Public Officer" shall mean the officer, officers, board or body who is or are authorized by Ordinances adopted hereunder to exercise the powers prescribe by such Ordinances and by this Ordinance. In this case, the person so designated by Neptune Township pursuant to this Ordinance shall be the Director of Code and Construction. Notwithstanding any other provision of law to the contrary, nothing shall prevent the municipality from designating more than one Public Officer for different purposes as provided by law.
- 11) "The Township Committee of Neptune Township" shall mean the committee, or other legislative body, charged with governing a municipality.

12) "Vacant Property" shall mean any building to be used as a residence or for commercial or industrial purposes, which is unoccupied and lacks habitual presence of human beings for a period of six months or more. Property which is used on a seasonal basis shall not be deemed vacant for purposes of this Ordinance. Property determined to be "abandoned" under this Ordinance must be determined to be "vacant" for purposes of this Ordinance. (This definition was added by Ordinance No. 15-26 adopted June 22, 2015)

12-5.3 – Determination that property is abandoned.

- A) Except as otherwise provided in this Ordinance, any property that has not been legally occupied for a period of 6 months or more and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the Public Officer that:
- 1) The property is in need of rehabilitation in the reasonable judgment of the Public Officer, and no rehabilitation has taken place during that 6-month period;
 - 2) Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least 6 months as of the date of a determination by the Public Officer pursuant to this section;
 - 3) At least one installment of property tax remains unpaid and delinquent on that property in accordance with chapter 4 of Title 54 of the Revised Statutes as of the date of determination by the Public Officer pursuant to this section; or
 - 4) The property has been determined to be a nuisance by the Public Officer in accordance with local Ordinances and State Statute.

12-5.4 – Determination of property as a nuisance.

- A) A property may be determined to be a nuisance if;
- 1) The property has been found to be unfit for human habitation, occupancy or use pursuant to State Statute and/or local Ordinance;
 - 2) The condition and vacancy of the property materially increases the risk of fire to the property and adjacent properties;
 - 3) The property is subject to unauthorized entry leading to potential health and safety hazards; the owner and in some cases the lienholder has failed to take reasonable and necessary measures to secure the property; or the municipality has secured the property in order to prevent such hazards after the owner and in some cases the lienholder has failed to do so;

- 4) The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds have created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards; or;
- 5) The dilapidated appearance or other condition of the property materially affects the welfare, including the economic welfare, of the residents of the area in close proximity to the property, and the owner has failed to take reasonable and necessary measures to remedy the conditions.
- 6) A Public Officer who determines a property to be nuisance pursuant to Subsections 2 through 5 of this section shall follow the notification procedures set forth in P.L. 1942, c.112 (C.40:48-2-3 et seq.).

12-5.5 – Property not deemed abandoned, conditions.

- A) If an entity other than the municipality has purchased or taken assignment from the municipality of a tax sale certificate on an unoccupied property, that property shall not be deemed to be abandoned if (1) the owner of the certificate has continued to pay all municipal taxes and liens on the property in the tax year when due; (2) the owner of the certificate takes action to initiate foreclosure proceedings within 6 months after the property is eligible for foreclosure and (3) the Public Officer has determined that the property is not a nuisance pursuant to Ordinance or that in the discretion of the Public Officer, the owner of the certificate has acted in good faith to repair and/or rehabilitate the property by its actions and through applications where necessary before this Historic Preservation Commission, Planning Board and/or Zoning Board of Adjustment and/or Zoning Department.
 - 1) A property which is used on a seasonal basis shall be deemed to be abandoned only if the property meets any two of the additional criteria set forth in this Ordinance. (Section 12-5.3(A)1-4).
 - 2) A determination that a property is abandoned property under the provisions of this Ordinance shall not constitute a finding that the use of the property has been abandoned for purposes of municipal zoning or land use regulation.

12-5.6 – Action concerning repair, closing or demolition - Identification of abandoned property, listing.

- A) This Ordinance hereby appoints the Director of Code and Construction as the Public Officer and directs the Public Officer to identify abandoned property for the purpose of establishing an abandoned property list throughout the municipality, or within those parts of the municipality as the governing body may designate by resolution. Each item of abandoned property so identified shall include the tax block and lot number, the name of the owner of record, if known, and the street address of the lot.
- B) The Public Officer shall establish and maintain a list of abandoned property, to be known as the “abandoned property list.” The municipality may add properties to

the abandoned property list at any time, and may delete properties at any time when the Public Officer finds that the property no longer meets the definition of an abandoned property. An interested party may request that a property be included on the abandoned property list following that procedure set forth by this Ordinance and/or Statute N.J.S.A. 55:19-105. An abandoned property shall not be included on the abandoned property list if rehabilitation is being performed in a timely manner, as evidenced by building permits issued and diligent pursuit of rehabilitation work authorized by those permits. A property on which an entity other than the municipality has purchased or taken assignment from the municipality of a tax sale certificate which has been placed on the abandoned property list may be removed in accordance with the provisions of this Ordinance or N.J.S.A. 55:19-103.

- C) The Public Officer, within 10 days of the establishment of the abandoned property list, or any additions thereto, shall send a notice, by certified mail, return receipt requested, and by regular mail, to the owner of records and all lienholders of every property included on the list shall cause the list to be published in the official newspaper of the municipality, which publication shall constitute public notice. The published and mailed notices shall identify property determined to be abandoned setting forth the owner of record, if known, the tax lot and block number and street address. The Public Officer, in consultation with the tax collector, shall also send out a notice by regular mail to any mortgagee, servicing organization or property tax processing organization that received a duplicate copy of the tax bill pursuant to subsection d. of R.S. 54:4-64. When the owner of record and/or lienholder is not known for a particular property and cannot be ascertained by the exercise of reasonable diligence by the tax collector, notice shall not be mailed but instead shall be posted on the property in the manner as provided in Section 5 of P.L.1942, c.112 (C.40:48-2-7). The mailed notice shall indicate the factual basis for the Public Officer's finding that the property is abandoned property as that term is defined in Section 35 of P.L.1996, c.62 (C.55:19-54) and the rules and regulations promulgated thereunder, specifying the information relied upon in making such finding. In all cases a copy of the mailed or opposed notice shall also be filed by the Public Officer in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county wherein the property is situate. This filing shall have the same force and effect as a Notice of Lis Pendens under N.J.S.A. 2A:15-6. The notice shall be indexed by the name of the property owner and lienholders as defendants and the name of the municipality as plaintiff, as though an action had been commenced by the municipality against the owner and/or lienholder.
- D) An owner or lienholder may challenge the inclusion of his property on the abandoned property list determined pursuant of subsection B of this section by appealing that determination to the Public Officer within 30 days of the owner's receipt of the certified notice or 40 days from the date upon which the notice was sent. An owner whose identity was not known to the Public Officer shall have 40 days from the date upon which notice was published or posted, whichever is later, to challenge the inclusion of a property on the abandoned property list. For good cause shown, the Public Officer shall accept a late filing of an appeal. Within 30 days of receipt of a request for an appeal of the findings contained in the notice pursuant to Subsection C of this section, the Public Officer shall schedule a hearing for redetermination of the matter. Any property included on

the list shall be presumed to be abandoned property unless the owner and/or lienholder, through the submission of an affidavit or certification by the property owner and/or lienholder averring that the property is not abandoned and stating the reasons for such averment, can demonstrate that the property was erroneously included on the list. The affidavit or certification shall be accompanied by supporting documentation, such as but not limited to photographs, repair invoices, bills and construction contracts. The sole ground for appeal shall be the property in question is not abandoned property as that term is defined by this Ordinance and/or State Statute. The Public Officer shall decide any timely filed appeal within 10 days of the hearing on the appeal and shall promptly, by certified mail, return receipt requested, and by regular mail, notify the property owner of the decision and the reasons therefore.

- E) The property owner and in some cases the lienholder may challenge an adverse determination of an appeal with the Public Officer pursuant to subsection D of this section, by instituting, in accordance with the New Jersey Court Rules, a summary proceeding in the Superior Court, Law Division, sitting in the county in which the property is located, which action shall be tried de novo. Such action shall be instituted within 20 days of the date of the notice of decision mailed by the Public Officer pursuant to Subsection D of this section. The sole ground for appeal shall be that the property in question is not abandoned property as that term is defined by this Ordinance and/or State Statute. The failure to institute an action of appeal on a timely basis shall constitute a jurisdictional bar to challenging the adverse determination, except that, for good cause shown, the court may extend the deadline for instituting the action.
- F) The Public Officer shall promptly remove any property from the abandoned property list that has been determined not to be abandoned on appeal.
- G) The abandoned property list shall become effective, and the municipality shall have the right to pursue any legal remedy with respect to properties on the abandoned property list at such time as any one property has been placed on the list in accordance with the provisions of this section, upon the expiration of the period for appeal with respect to that property or upon the denial of an appeal brought by the property owner.

12-5.7 – Removal from abandoned property list; conditions.

- A) If a property, which an entity other than the municipality has purchased or taken assignment from the municipality of a taxes sale certificate, is placed on the abandoned property list, the property shall be removed from the list if the owner of the certificate pays all municipal taxes and liens due on the property within 30 days after the property is placed on the list; provided, however, that if the owner of the certificate fails to initiate foreclosure proceedings within 6 months after the property was first placed on the list, the property shall be restored to the abandoned property list.

12-5.8 – Requirements of owners and in some cases lienholders of vacant property.

- A) The owner and in some cases the lienholder of any building that has become vacant property, and any person maintaining, operating or collecting rent for any such building that has become vacant, shall, within 30 days:
- 1) Enclose and secure the building against unauthorized entry as provided in the applicable provisions of the municipal code and per the direction of the Director of Code and Construction of the municipality.
 - 2) Post a sign affixed to the building indicating the name, address and telephone number of the owner, the owner's authorized agent for the purpose of service of process and the person responsible for day-to-day supervision and management of the building, if such person is different from the owner holding title or the authorized agent. The sign shall be of a size and placed in such a location so as to be legible from the nearest public street or sidewalk, whichever is nearer, but shall be no smaller than 18 inches by 24 inches.
 - 3) Secure the building from unauthorized entry and maintain the sign until the building is again legally occupied or demolished or until repair or rehabilitation of the building is complete.
 - 4) Ensure that the vacant property is inspected on a monthly basis by the owners authorized and prepare inspection reports, which shall be forwarded to the Director of Code and Construction not later than the end of each month.
 - 5) Ensure that the property is maintained in accordance with the property maintenance regulations of the Township, including but not limited to that of the interior and exterior of all structures, including yards, fences, sidewalks, walkways, right-of-way, alleys, retaining walls, swimming pools, attached or unattached accessory structures and driveways are well maintained and free from trash, debris, loose litter, grass and weed overgrowth.
 - 6) The owner or agent or in some cases the lienholder of any vacant property shall acquire and otherwise maintain liability insurance, in an amount of not less than \$300,000.00 for the buildings, designed primarily for residential use, and not less than \$1,000,000.00 for any other building, including but not limited to buildings designed for manufacturing, industrial, storage or commercial uses, covering any damage to any person or any property caused by any physical condition of or in the building or property subject to the provisions of this article. Such insurance shall provide a rider for payment of all demolition costs should the vacant building become abandoned and require the Township of Neptune to demolish the building. Any insurance policy acquired or renewed after the building has become vacant shall provide for a written notice to the Township of Neptune's Director of Code and Construction within 30 days of any lapse, cancellation or change in coverage. The owner, or in some cases the lienholder, shall attach evidence of the insurance to the owner's registration statement. Any registration statement submitted that does not include such evidence shall be

deemed to be an invalid registration. The insurance must name the Township of Neptune as a party or payee for demolition costs, should the Township deem demolition as required.

12-5.9 – Administration.

The Director of Code and Construction may issue rules and regulations for the administration of the provisions of this article.

12-5.10 – Action that may be taken by the municipality.

- A) In the event that the owner or in some cases the lienholder fails to meet the requirements of maintaining a vacant property pursuant to Section 10, then the Public Officer in his/her sole discretion may issue a Notice of Violation against the property owner or in some cases the lienholder requiring compliance within thirty days of the Notice of Violation, said Notice shall be issued to the appropriate parties as set forth above; and upon non-compliance with the Notice of Violation, the Public Officer may in his/her sole discretion issue a Summons concerning the violation of this Ordinance to be heard in the Municipal Court of Neptune Township, or secure the subject structure itself, or by agreement with a third party to restore the subject building to a non-nuisance level. The costs incurred by the municipality in so proceeding, including reasonable administrative charges, shall be assessed against and be a lien upon the subject property.
- B) The Public Officer in his/her sole discretion may postpone any such action aforesaid if he/she believes that the property owner and in some cases the lienholder is acting in good faith to repair and/or rehabilitate the subject property through his, her or its actions, including but not limited to applications made where necessary to the Historic Preservation Commission, Planning Board and/or Zoning Board of Adjustment and/or Zoning Department.

12-5.11 - Enforcement against certain lienholders.

- A) Pursuant to N.J.S.A. 46:10B-51, all creditors or lienholders to property subject to this Ordinance have 10 days from the date that a foreclosure action is filed to serve the foreclosure Summons and Complaint as notification only upon the Municipal Clerk when a foreclosure action has been instituted. This Notice must contain all information set forth in the aforesaid State Statute.
- B) All creditors who have filed foreclosure proceedings pursuant to the aforesaid State Statute and prior to transfer of said title at Sheriff's Sale, shall be equally responsible for maintaining the subject property in compliance with this Ordinance, and shall receive the same notices concerning violation of this Ordinance and be subject to the same conditions and penalties.

12-5.12 – Effect on Uniform Construction Code.

- A) No provision hereof shall be construed as restricting or otherwise abrogating the enforcement and other powers of the Township's Director of Code and Construction under the New Jersey Uniform Construction Code, including, without limitation, N.J.S.A. 52:27D-123 et seq. and N.J.A.C. 5:23-1.1 et seq. (collectively, the Code). The provision herein shall be construed as consistent with the enforcement and other powers of the Township's Director of Code and Construction under the Code.

12-5.13 – Violation and penalties.

- A) Any owner or applicable lienholder who is not in compliance with this Ordinance or who otherwise violates any provision of this Ordinance or the rules and regulations issued hereunder, shall be subject to a fine not exceeding \$2,000.00 (Two Thousand Dollars) or a period of community service not exceeding 90 days or imprisonment of a term not exceeding 90 days, or any combination of the aforesaid penalties for each offense. Every day that a violation continues shall constitute a separate and distinct offense. Fines assessed under this section shall be recoverable from the owner and in some cases the lienholder and shall be a lien on the subject property.
- B) Any Court verdict or Plea Agreement which requires compliance with this Ordinance shall limit compliance to no more than 30 (Thirty) days from the date of the verdict or agreement with enhanced penalties in the discretion of the Court for non-compliance.

12-5.14 – Discontinuation of Certain Utility Services.

- A) The Public Officer appointed by the Township of Neptune may act upon the Vacant and Abandoned Property Ordinance, and may initiate a request of any utility to take all necessary steps to enter the premises listed on the Abandoned Property List established pursuant to Section 12-5.6 of the Vacant and Abandoned Properties Ordinance and this Chapter for the discontinuance of the utility services and the removal of utility equipment from said property, or any property that is determined by the Public Officer to meet the definition of abandoned property, and shall accompany representatives, agents and/or employees of said utility companies, along with any law enforcement officer the Public Officer considers appropriate upon the property at the time of discontinuance of utility service, removal of utility equipment or any action associated therein.
- B) Any owner or applicable lienholder who interferes or takes action to prohibit such entry and discontinuance of service shall be subject to the violations and penalties set forth more fully in Section 12-5.13 of this Chapter.

(Section 12-5.14 was added by adoption of Ordinance 14-47 on November 24, 2014)

BE IT FURTHER ORDAINED that this Ordinance shall take effect upon final adoption of publication of notice of adopted is required by law; and,

BE IT FURTHER ORDAINED, that all Ordinances or parts of Ordinances that are inconsistent herewith are repealed, but only to the extent of such inconsistency.

