

Introduced by: Mr. Tackett
Co-sponsored by: Mr. Cartier
Ms. Diller
Ms. Kilpatrick
Mr. Sheldon
Date of introduction: November 10, 2014

SUBSTITUTE NO. 1
TO
ORDINANCE NO. 14-117
TO AMEND NEW CASTLE COUNTY CODE CHAPTER 7 TO REQUIRE THE REGISTRATION AND PAYMENT
OF FEES FOR VACANT PROPERTIES

WHEREAS, the proliferation of vacant premises and their detrimental effect on neighborhoods has become a national problem, exacerbated by the economic downturn; and

WHEREAS, a vacant property may become an eyesore, a fire hazard, a wildlife refuge, a shelter for transients, a center for illicit drug traffic and use, a target for graffiti and vandalism, an asylum for vermin, a health hazard, a general community nuisance, and degrade adjoining properties and their values, causing the County to expend funds for police, fire service, community service and code enforcement oversight and response; and

WHEREAS, in short, it has been recognized that law enforcement, fire departments and other government services must be expended in disproportionate measure to protect the general public in areas surrounding vacant premises; and

WHEREAS, jurisdictions in the State of Delaware and throughout the nation have recognized that vacant property registration fees specifically benefit the owners of vacant premises by financing in part the additional government services required to protect the value and security of the vacant buildings and the problems created by them; and

WHEREAS, Delaware law provides that a lien or liens arise when fees are imposed by law or ordinance of any political subdivision of the State (including the County Council of any County) and include, without limitation, fees for registration of ownership of any vacant buildings located within that political subdivision (25 *Del. C.* Section 2901(a)(1)(j)); and

WHEREAS, because this ordinance contains appellate rights (Section 7.02.003), and a notice of lien is not perfected until filed under State law (9 *Del. C.* Section 2901(b)), the notice shall not be filed until after the appeals period has expired without appeal or until determination of the appeal(s) or expiration of the stay, whichever first occurs; and

WHEREAS, Delaware courts have found that vacant property registration is a proper exercise of governmental authority to protect the health, safety and welfare of the citizenry and is a valid regulatory scheme with a reasonable fee based on the effect of property left vacant for a length of time; and

WHEREAS, the following jurisdictions in Delaware currently utilize vacant property registration: Arden, Camden, Dover, Elsmere, Harrington, New Castle, Smyrna and Wilmington; it is proposed for Milton; and

WHEREAS, New Castle County believes that vacant housing creates problems in the unincorporated areas of the County as well and that a vacant housing registration requirement and fee for those areas would advance the health and welfare of the citizenry; and

WHEREAS, this ordinance seeks to discourage vacancy, maintain unoccupied buildings to an acceptable community standard, keep a database of contact information of the parties responsible for unoccupied buildings and assess a fee to the parties responsible for vacant buildings for the increased police, fire and code enforcement costs associated with the risks of vandalism, arson, loitering, pests, crime and other economic and social costs to said buildings.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE ORDAINS:

Section 1. *New Castle County Code* Chapter 7 (“Property Maintenance Code”), Article 2 (“Registration and Payment of Fees for Vacant Premises”) is hereby established with the following language, all of which is to be considered underscored.

ARTICLE 2. REGISTRATION AND PAYMENT OF FEES FOR VACANT PREMISES

Sec. 7.02.001. General.

A. *Purpose.* It is the intent of this ordinance to protect the public health, safety and welfare of the general public by imposing a registration requirement and fees on persons responsible for vacant properties in New Castle County, which properties are more likely than occupied structures to become sites of ordinance violations and illegal activity and to pose a greater burden on County code enforcement, fire resources and police costs that should be borne by those creating the demand for these resources, with the ultimate goal of promoting rehabilitation and occupancy of these premises.

B. *Existing remedies.* Nothing in this Article shall be construed to abolish or impair existing remedies of the County or its agencies relating to remediation of any dangerous, unsafe, or unsanitary conditions or enforcement of other Code provisions relating to these properties, including, without limitation, Article 1 of this chapter (“Standards for Property Maintenance”).

C. *Definition.* For the purpose of this Article, *vacant* means any premises intended for residential or commercial use which is not currently occupied or in use wherein no person or persons actually, currently conduct a lawfully licensed business or lawfully reside or live in any part of the building as the legal or equitable owner(s) or tenant-occupant(s) or tenant(s) on a permanent, non-transient basis or that is unoccupied. *Occupied* means any building or structure wherein one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water

and sewer services; a valid business license; or the most recent federal or state income tax statements indicating that the subject property is the official business or residence address of the person(s) or business(es) claiming occupancy.

D. *Applicability.* The requirements of this Article are applicable to each owner of any vacant premise that has been vacant for more than 90 consecutive days. Each such owner shall cause to be filed a notarized registration statement, on a form to be developed by the Department of Land Use, which shall include the street address and parcel number of each vacant premise, the names and addresses of all owners and any other information deemed necessary by Code Enforcement. The registration fee(s) described in Section 2 shall be billed by the County and shall be paid by January 1 of each year. For purposes of this section, the following shall be applicable to providing the names and addresses of all owners: If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the Secretary of State. If the owner is a trust, the name and address of all trustees, grantors and beneficiaries must be provided; if the owner is an estate, the name and business address of the estate executor must be provided; if the owner is a partnership, the names and addresses of all partners with an interest of ten percent or greater in the premises must be provided; if another form of unincorporated association owns the vacant premise(s), the names and residence of all principals with an interest of 10 percent or greater in the premises must be provided; if an individual, the name and residential address of the individual must be provided. If none of the persons listed above is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owner and who shall be designated as a responsible local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements herein.

Sec. 7.02.002. Registration Statement, fees, exceptions and duty to amend registration statement.

Registration shall be required for all vacant premises that have remained vacant for 90 consecutive days or more as further described in (E) above; registration is required within ten (10) days of premises being vacant for 90 days. An exception is permitted for a building owned by the United States, State of Delaware, or a municipality. In no instance shall the registration of vacant premises exonerate the owner, agent or party responsible from the responsibility to comply with other Code requirements. One registration statement may be filed to include all vacant premises of the owner so registering. The owner of the vacant premises as of November 1 of each calendar year shall be responsible for paying the non-refundable registration fee by January 1 of each calendar year. Fees shall be: zero for vacant premises vacant for less than one year; \$100 for vacant premises vacant at least one year but less than two years; \$500 for vacant premises vacant for at least two years but less than three years; \$1,000 for vacant premises vacant for at least three years but less than five years; \$3,500 for properties that are vacant for at least five years but less than ten years; \$5,000 for vacant premises that are vacant for at least ten years plus an additional \$500 for each year in excess of 10. This escalating fee schedule reflects the inevitable increased social and economic costs associated with vacant and likely

deteriorating vacant premises over a progression of years and also is intended to encourage rehabilitation and occupancy. It is the duty of the owner to contact Code Enforcement within 30 days upon occurrence of a change in registration information during the course of any calendar year. The period of years the premises are deemed vacant will begin anew upon a change of registered owners unless it is proven by piercing the corporate veil or otherwise that the principals behind the new owners are the same as the former, with the title change in ownership an apparent attempt to avoid the fees.

Sec. 7.02.003. Waiver of registration fee.

A one-time waiver of the registration fee or a waiver of the fee for up to 90 days may be granted by the code official or designee upon application of the owner and upon review and advice of the office of law, within 30 days from the date of the bill for the registration fee, or if denied, upon appeal to the Board as set forth above, if the owner: a) demonstrates that he/she or it is in the process of demolishing, rehabilitating or repairing the vacant premises; b) is actively attempting to sell or lease the vacant premises; c) has paid all registration fees and other financial obligations to the County associated with the vacant premises. The time period for extension as the result of a waiver will begin on the date of the written decision granting the extension and shall not exceed 90 days. If all criteria are met, a private, public, for-profit or non-profit organization that has been building, rehabilitating, and providing affordable housing units within the County or some other similar jurisdiction for at least five (5) years shall be exempt from the standards of this Article, provided that their own written standards for the maintenance, appearance and safety of vacant dwellings meet or exceed the requirements herein and provided that they obtain the approval of the Code official.

Sec. 7.02.004. Violations; fines; penalties; liens.

After an owner is given notice of the registration fee due or of failure to update information required, other than an owner who or that has perfected an appeal, and the owner fails to pay the amount due, the administrative penalty shall be \$150 for the first violation regardless of the number of vacant premises that have not been registered by the owner. Failure to register vacant premises or update information within 10 days of receiving the penalty notice shall result in a penalty of \$10 a day thereafter for each vacant premise not properly registered; the penalty shall continue until the vacant premise(s) is/are registered. After notice of the registration fee due and/or failure to update information (except for owners who have perfected an appeal), the fee and penalty shall constitute a debt owed to New Castle County. The unpaid fees and penalty shall be considered a tax lien and collected in the same manner as other County real estate taxes.

Sec. 7.02.005. Appeal rights.

The owner has the right to appeal the imposition of the registration fees first to the Land Use Department's Administrative Hearing Officer, with a subsequent right of appeal to the Board of License, Inspection and Review upon filing an application and fee set by the Board. The initial appeal shall be filed no later than ten (10) business days from the date of the billing statement as set forth in Section PM 106.3.1.2.4.1. Any the department and appellate procedures shall be as set forth in Section PM 106.3.1.6 . A subsequent appeal to the Board of License, Inspection and Review shall be filed with the

Department of Land Use within twenty (20) days of the date the written decision is issued by the Department. On appeal, the owner shall bear the burden of providing objective proof of occupancy of the premises. A notice of lien and other charges as permitted by 29 *Del. C.* Chapter 29 may be filed after the expiration of all stays.

Section 2. The provisions of this Article shall be severable. If any provision of this Article is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Article shall remain valid unless the court finds that the valid provisions of this Article are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision, that it cannot be presumed that County Council would have enacted the remaining valid provisions with the unconstitutional or void one or unless the court finds that the remaining valid provisions, standing alone, are incomplete or incapable of being executed in accordance with County Council's intent.

Section 3. This ordinance shall become effective sixty (60) days after passage by New Castle County Council and approval by the County Executive or sixty (60) days after the ordinance otherwise becomes law pursuant to 9 *Del. C.* Section 1156.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: New Castle County with this ordinance joins other Delaware jurisdictions and those across the nation that have recognized the detrimental effect of vacant premises on residents and the concomitant increased demand on County police, fire and community services prompted by these vacant premises, by imposing a registration requirement and escalating fee on the owners of vacant premises to recoup part of the County's fees and to protect its neighborhoods and residents from the adverse effects of vacant premises such as health and sanitation violations, fire hazards, vagrancy, graffiti, crime, neglect, decreased property values, vermin, untended vegetation, grass and sidewalks

and other issues. That said, a change in ownership begins anew the term that a property is deemed vacant unless it is proven that the principals behind the new ownership entity are the same as the prior owners and that the change in the name of the owner is intended to avoid the fees.

Substitute 1 contains the following changes from the original ordinance: it removes the definition of “owner” already contained in Chapter 7; refines the definition of “vacant” and combines it with the definition of “occupied” for clarification; increases from 45 to 90 days the time that a property must be vacant before registration is required and adds that registration must occur with 10 days of the property being vacant for 90 days; decreases the registration fees for properties vacant up to five years but retains the fees for properties vacant five years and more; changes the reference to the Code official to reflect the language already in the Code; and expands and better delineates the exemptions for those who build or rehabilitate affordable housing.

FISCAL NOTE: