

ORDINANCE NO. 1153

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE BOROUGH OF MECHANICSBURG, ADOPTED BY ORDINANCE NO. 925 AND THEREAFTER AMENDED, CHAPTER 5 (CODE ENFORCEMENT) AND ESTABLISHING THE REGISTRATION, MAINTENANCE AND SECURITY OF ABANDONED REAL PROPERTY AND PROVIDING FOR REGISTRATION FEES AND PENALTIES FOR VIOLATIONS, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, in accord with the provisions of the Borough Code, 8 Pa.C.S.A. §101 et seq., Borough Council of the Borough of Mechanicsburg (the "Borough") has the power to prohibit nuisances and dangerous structures, to make such regulations that may be necessary for the health, safety, morals, general welfare, and cleanliness of the Borough;

WHEREAS, the Borough of Mechanicsburg recognizes an increase in the number of abandoned properties located throughout the Borough; and

WHEREAS, the presence of abandoned properties can lead to a decline in property value, creates attractive nuisances, and leads to a general decrease in neighborhood and community aesthetics; and

WHEREAS, the presence of abandoned properties may discourage prospective buyers from purchasing real property within the Borough; and

WHEREAS, many abandoned properties are the responsibility of absentee owners, mortgage holders, and trustees who, upon giving of a Notice of Default to the mortgagor, or upon becoming a mortgagee in possession, or upon becoming holder of title pursuant to a mortgage foreclosure sale, fail to adequately secure and maintain such properties; and

WHEREAS, the Borough has a vested interest in protecting the Borough against the decay caused by abandoned properties and concludes that it is in the best interest of the citizens and residents to impose registration requirements on such properties located within the Borough.

NOW, THEREFORE, be it ORDAINED by the Borough Council of the Borough of Mechanicsburg, the following:

SECTION 1. Part 5 of Chapter 5 [Code Enforcement] of the Code of Ordinances of the Borough of Mechanicsburg is hereby designated as follows:

PART 5: ABANDONED PROPERTY MAINTENANCE AND REGISTRATION

SECTION 2. Section 5-501 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-501: PURPOSE AND INTENT:

- A. It is the purpose and intent of the Borough to establish a process to address the amount of deteriorating real property located within the Borough, which includes property, whether vacant or occupied, about which a public notice of default has been filed, is in foreclosure, or where ownership has been transferred to lender or mortgagee by any legal method. It is the Borough's further intent to specifically establish an abandoned property program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.
- B. For the protection and promotion of the public health, safety and welfare of the citizens of the Borough, the Borough Council hereby establishes the rights and obligations of owners, mortgagees and property management companies of abandoned properties within the Borough and encourages owners, mortgagees and property management companies to maintain and secure such property through registration and compliance with this Ordinance.

SECTION 3. Section 5-502 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-502: DEFINITIONS:

The following words, terms and phrases, when used in these sections of the Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned real property – real property that meets any of the following criteria:

- A. Any property that is vacated or occupied and is subject to a mortgage under a Notice of Default or Notice of Mortgagee's Sale, pending Tax Claim Sale or vacated properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure or sale.
- B. Any property (excluding government-owned buildings) which is:
 - (1) Unoccupied and unsecured; or
 - (2) Unoccupied and secured by other than normal means; or
 - (3) Unoccupied and an unsafe building as determined by the Enforcement Officer; or
 - (4) Unoccupied and having utilities disconnected; or

- (5) Unoccupied and has property maintenance or building code violations; or
- (6) Illegally occupied, which shall include loitering and vagrancy; or
- (7) Unoccupied for a period of time over sixty (60) days and having an existing code violation issued by the Building Department; or
- (8) Unoccupied with a mortgage status of abandonment (i.e. deceased or foreclosed); or
- (9) Unoccupied and abandoned by the property owner; or
- (10) Unoccupied and advertised for sale by owner for a period exceeding 120 calendar days; or
- (11) Unoccupied and listed for sale by a Pennsylvania Licensed Realtor for a period exceeding 12 months.

Borough—The Borough of Mechanicsburg, Cumberland County, Pennsylvania.

Enforcement officer – Any building official, zoning inspector, code enforcement officer, health officer, fire inspector or building inspector employed by the Borough.

Evidence of abandonment – Any condition that on its own, or combined with other conditions present would lead a reasonable person to believe that the property is abandoned. Such conditions may include, but not be limited to, overgrown or dead vegetation, accumulation of abandoned personal property, as defined herein, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacated.

Foreclosure – The process by which a property, placed as security for a real estate loan, is sold at public sale to satisfy the debt if the borrower defaults.

Mortgage – A conveyance of title to property that is given as security for the payment of debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms.

Mortgagee – One to who property is mortgaged or the mortgage creditor or lender.

Mortgagee in possession – A mortgagee who takes control of mortgaged land by agreement with the mortgagor, usually upon default of the loan secured by the mortgage.

Owner – Any person, agent, operator, firm, partnership, legal entity, or corporation having a legal or equitable interest in real property; or recorded in the official records of the Commonwealth, County or Borough as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the trustee,

executor or administrator of the estate of such person if authorized by law to take possession of real property, or if ordered or authorized to take possession of real property by a court.

Person – An individual, corporation, partnership or any other group acting as a unit.

Public Nuisance - Abandoned Property in the Borough of Mechanicsburg as further defined in this Chapter herein shall constitute a Public Nuisance.

Property Management Company – A property manager, property maintenance company or similar entity or individual responsible for the maintenance of abandoned real property.

Unoccupied – without inhabitants; deserted

SECTION 4. Section 5-503 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-503. APPLICABILITY:

A. Immediately after the effective date of this article, and continuing thereafter, the Enforcement Officer shall evaluate all buildings in the Borough believed to be unoccupied on the effective date of this article and shall make a determination for each as to whether the building is 'abandoned', a public nuisance and potentially a public safety hazard as defined by Section 108 of Chapter 5 of the Mechanicsburg Borough Codified Ordinance. The determination shall be in writing and shall state the factual basis for the determination. The Enforcement Officer shall, within ten (10) days of determining that a building is a 'abandoned', send written notice to the last owner of record on the most recent Cumberland County tax roll. The Notice will include the factual findings supporting the determination that the property is abandoned. Said Notice of Determination shall be sent to the owner or designated agent by certified mail, return receipt requested. However, if the address of the owner or designated agent is unknown and cannot be ascertained by the Enforcement Officer in the exercise of reasonable diligence, copies of the notice shall be posted in a conspicuous place on the property affected. Any appeals from the determination of the Codes Department shall be made within ten (10) days before the Property Maintenance Code Appeals Board as set forth in Section 111.1 of Chapter 5 of the Borough Codified Ordinance, upon the deposit of an appropriate fee. In the absence of such an appeal, the determination of the Codes Department shall be final.

B. The written notice sent to the owner or the owner's agent shall describe the conditions that render the property abandoned, and shall require the owner's registration within twenty (20) days of the receipt of such notice. The Borough may also post notices on the Borough's website to provide additional notice to the public.

SECTION 5. Section 5-504 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-504. REGISTRATION OF ABANDONED REAL PROPERTY:

A. If the property is found to be abandoned or shows evidence of abandonment, it shall be deemed abandoned real property and the mortgagee shall, within ten (10) days of the

inspection, register the property with the Borough, or its designee, on forms provided by the Borough or through a website designated by the Borough.

B. Registration pursuant to this section shall contain the name of the mortgagee and the servicer, the direct mailing address of both parties, a direct contact name and telephone number for both parties, a facsimile number and email address for both parties, the folio or tax number, and the name and twenty-four (24) hour contact phone number of the property management company responsible for the security and maintenance of the property.

C. This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

D. A registration fee per property shall accompany the registration form(s).

E. Properties subject to this section shall remain under the registration requirement, security and maintenance standards of this section as long as they remain abandoned as defined herein.

F. Any person, legal entity, or corporation that has registered a property under this section must report any change of information contained in the registration in writing within ten (10) days of the change to the Enforcement Officer or his designee.

SECTION 6. Section 5-505 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-505. EXCEPTION FROM REGISTRATION REQUIREMENT:

A. A building under active construction/renovation and having a valid building permit(s) at the time of initial inspection shall be exempt from registration until the expiration of the longest running, currently active building permit.

B. A building which has suffered fire damage or damage caused by extreme weather conditions shall be exempt from the registration requirement for a period of sixty (60) days after the date of the fire or extreme weather event if the property owner submits a request for exemption in writing to the Codes and Zoning Department. This request shall include the names and addresses of the owner or owners, and a statement of intent to repair and reoccupy the building in an expedient manner, or the intent to demolish the building.

C. A building that has been granted an exemption pursuant whereby an owner of an abandoned building files a written application with the Codes and Zoning Officer who shall timely consider same. In determining whether a request for exemption should be granted, the Codes and Zoning Officer shall consider the following: the applicant's prior record as it pertains to Borough's Building Code, or Property Maintenance Code violations; the number of other vacant property the applicant currently has within the Borough; and the length of time that the abandoned building for which the exception is sought has been vacated or abandoned.

SECTION 7. Section 5-506 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-506. REGISTRATION FEES:

Registration fees required for this Chapter for the initial twelve (12) months of abandonment, will be set at \$250.00. The fees for the second year will be \$500.00. The fees for the third year will be \$1,000.00 per year and any subsequent year will be \$2,000.00. The Registration fees may be amended from time to time by Resolution of Borough Council.

SECTION 8. Section 5-507 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-507. MAINTENANCE REQUIREMENTS:

A. All exterior property shall be maintained in compliance to Chapter 5 of the Mechanicsburg Borough's Codified Ordinance (Property Maintenance Code).

SECTION 9. Section 5-508 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-507. SECURITY REQUIREMENTS:

A. Properties subject to this Ordinance shall be maintained in a secure manner so as not to be accessible to unauthorized persons or to rodents or pests.

B. A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows shall be secured by reglazing of the window.

C. If the mortgagee or property owner of record is unable or unwilling to perform maintenance and inspections itself, the owner of the property shall contract with a property management company who shall perform bi-weekly inspections to verify compliance with the requirements of this section, and any other applicable laws.

D. Failure of the mortgagee or property owner of record to properly maintain the property will result in a violation of the Borough Ordinance and will result in the issuance of a Citation. Pursuant to a finding and determination by the Borough's Code Enforcement Office, the Borough may take the necessary action to ensure compliance with this Ordinance.

SECTION 10. Section 5-509 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-509. IMMUNITY OF ENFORCEMENT OFFICER:

Any enforcement officer or any person authorized by the enforcement officer shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this Ordinance.

SECTION 11. Section 5-510 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-510. PENALTIES AND REMEDIES:

A. It shall be a violation of this Ordinance to commit or permit any other person to commit any of the following acts:

- 1) To fail to register any property required by Section 504 of this Ordinance.
- 2) To fail to pay a registration fee in the amount pursuant to Section 506 of this Ordinance.
- 3) To fail to maintain and secure properties pursuant to the provisions of Chapter 5 of Mechanicsburg Borough Codified Ordinances.
- 4) To place any false information on or to omit relevant information from an application for registration provided pursuant to this Ordinance.
- 5) To fail or refuse to comply with any other provision of this Ordinance.

B. Penalties and Remedies.

- 1) Any person who shall violate any of the provisions of this Ordinance shall be guilty of a summary offense and, upon conviction thereof before a Magisterial District Judge, shall be sentenced to pay a fine of not less than \$500.00 and the cost of prosecution for each and every offense, and in default of payment thereof, shall be sentenced to imprisonment in Cumberland County Prison for not more than thirty (30) days. Each violation and each day a violation shall constitute a separate offense.
- 2) In addition to prosecution of the persons or legal entities violating this Ordinance, a Borough Enforcement Officer, Borough Solicitor, or any other duly authorized agent of the Borough may bring such civil or equitable actions, seeking civil or equitable remedies, and any appropriate Court of record of the Commonwealth of Pennsylvania, against any persons and/or property, real or personal, to effect the provisions of this Ordinance. The remedies and procedures of this Ordinance are not intended to supplant or replace, to any degree, the remedies provided to the Borough in the Borough's International Property Maintenance Code, Uniform Construction Code, Zoning Ordinance, or any other Borough Code, Ordinance or Resolution.

- 3) These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but shall rather be an additional remedy available to the Borough above and beyond any other state, county or local provisions for same.

SECTION 12. Section 5-511 of Part 5 of Chapter 5 [Code Enforcement] is hereby designated as follows:

§5-511. APPEALS:

A. Any person aggrieved by the action of the Borough or its designee relevant to the provisions of this Ordinance may appeal to the Borough's Property Maintenance Board of Appeals within thirty (30) days of that action.

B. Any person aggrieved by any decision of the Borough or the Borough's Property Maintenance Board of Appeals relevant to the provisions of this Ordinance may appeal to the Cumberland County Court of Common Pleas within thirty (30) days of the decision.

SECTION 13. All ordinances or any parts thereof which are inconsistent herewith are hereby repealed.

SECTION 14. If any provision, sentence, clause section or any part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, section or parts of the Ordinance.

SECTION 15. This Ordinance shall take effect immediately upon its enactment.

ENACTED AND ORDAINED this 17th day of November, 2015

ATTEST:

BOROUGH OF MECHANICSBURG



Patrick E. Dennis, Secretary

By: 

Rodney L. Whitcomb, President

APPROVED this 17th day of November, 2015



Jack C. Ritter, Mayor