

ORDINANCE 2022-14

AN ORDINANCE OF THE BOROUGH OF CHESTER, MORRIS COUNTY, STATE OF NEW JERSEY, AMENDING AND UPDATING CHAPTER 183 (PROPERTY MAINTENANCE) ARTICLE XI, CHAPTER 183 (VACANT AND ABANDONED PROPERTY) SECTIONS 183-69 THROUGH 183-74 OF THE BOROUGH CODE TO COMPLY WITH P.L. 2021, CHAPTER 44

WHEREAS, Chapter 183, Article XI, Sections 183-69 through 183-69 of the Borough Code addresses the blight caused by vacant and abandoned properties in the Chester Borough community; and

WHEREAS, P.L. 2021, CHAPTER 44 was signed into law and addressed in part municipalities' ability to regulate and register by ordinance vacant and abandoned properties within their communities; and

WHEREAS, municipalities are empowered to make, amend, repeal, and enforce its ordinances pursuant to Statute (N.J.S.A. 40:48-1, et seq.); and

WHEREAS, municipalities are required by Statute to follow specific procedures for the passage of ordinances (N.J.S.A. 40:49-2 et seq.); and

WHEREAS, the Mayor and Borough Council wish to amend Chapter 183 (PROPERTY MAINTENANCE) Article XI (VACANT AND ABANDON PROPERTY) Sections 183-69 through 183-74 of the Borough Code to comply with P.L. 2021, CHAPTER 44; and

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Chester, County of Morris, State of New Jersey that Chapter 183 (PROPERTY MAINTENANCE) Article XI (VACANT AND ABANDON PROPERTY) of the Borough Code is hereby amended and supplemented as follows:

SECTION 1: Article XI, Chapter 183 (Property Maintenance) of the Code of the Borough of Chester is hereby amended to read as follows: "FORECLOSED VACANT AND ABANDONED PROPERTIES."

SECTION 2: Chapter 183, Section 183-69 shall be amended to read as follows:

§ 183-69. Foreclosed Vacant and Abandoned Properties (Definitions).

A. "Vacant and Abandoned Property" (referred to as "Property" in this Chapter) shall mean property within the Borough which is not legally occupied by an owner, mortgagor, or tenant, which is in such condition that it cannot be legally reoccupied, because of the presence or finding of at least two of the following:

- (1) overgrown or neglected vegetation;
- (2) the accumulation of newspapers, circulars, flyers, or mail on the property;
- (3) disconnected gas, electric, or water utility services to the property;

- (4) the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (5) the accumulation of junk, litter, trash, or debris on the property;
- (6) the absence of window treatments such as blinds, curtains, or shutters;
- (7) the absence of furnishings and personal items;
- (8) statements of neighbors, delivery persons, or government employees indicating that the property is vacant and abandoned;
- (9) windows or entrances to the property that are boarded up or closed off, or multiple window panes that are damaged, broken, and unrepaired;
- (10) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
- (11) a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
- (12) an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
- (13) the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;
- (14) a written statement issued by a mortgagor expressing the clear intent of all mortgagors to abandon the property; or

B. “**Owner**” shall be defined to include the title holder(s), agent of the title holder(s) having authority to act with respect to Property, a property receiver, a mortgage or lien holder in possession or control of Property, a foreclosing entity, and any debtor in possession of Property,

C. “**Registrant**” shall mean any person or entity who files or is required to file a registration statement in accordance with this Article.

D. “**Creditor**” shall mean a mortgagee or an agent or assignee of a mortgagee, such as the servicer, who has filed a complaint in the Superior Court seeking to foreclose upon a residential or commercial mortgage or lien. If the entity seeking to foreclose upon the residential or commercial mortgage changes as a result of an assignment, transfer, or otherwise after the filing of the foreclosure complaint in the Superior Court, the new entity shall be deemed the creditor for purposes of this section. For purposes of this section, a creditor shall not include the State, a political subdivision of the State, a State, county, or local government entity, or their agent or assignee, such as the servicer.

SECTION 3. Chapter 183, Section 183-70 shall be amended to read as follows:

§183-70 Mandatory Registration and Maintenance of Current Information

A. An Owner of vacant and abandoned property shall register the residential or commercial property with the Borough's property registration program.

B. A creditor filing a summons and complaint in an action to foreclose shall, in addition to the notice provided to the Borough pursuant to N.J.S.A. 46:10B-51 or 40:48-2.12s2, shall also register the residential or commercial property with the Borough's property registration program as a property in foreclosure and, as part of that registration: (a) provide the municipality with the information regarding the creditor required by N.J.S.A. 46:10B-51 or 40:48-2.12s2; (b) identify the date the summons and complaint in an action to foreclose on a mortgage or lien was filed against the subject property, the court in which it was filed, and the docket number of the filing; and (c) identify whether the property is vacant and abandoned in accordance with the above definition in this Article.

C. If there is any change in the name, address, or telephone number for a representative, agent, or individual authorized to accept service on behalf of an owner or creditor registered pursuant to paragraph A, above, the registrant shall update the property registration information within ten (10) days of the change in that information.

D. If the registered property becomes vacant and abandoned in accordance with the definition set forth above in this Article, the registrant shall update the property registration to reflect the change in the property's status within ten days of learning of the status change.

E. A creditor filing a summons and complaint in an action to foreclose shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property after the property has been registered pursuant to this Article.

F. An owner or creditor located outside New Jersey shall appoint an in-State representative or agent to act for the owner or creditor when registering the property pursuant to this Article.

G. Each Property having a separate block and lot number as designated in official records of the Borough shall be registered separately.

H. Registration shall remain valid for one (1) year from the date of registration except for the initial registration time which shall be pro-rated through December 31. Registrants shall renew the registration annually as long as the property remains vacant and abandoned and shall pay a registration or renewal fee in the amount prescribed below in this section, for each Property registered.

I. The annual renewal shall be completed by January 31st each year for that year. The initial registration fee shall be pro-rated for registration statements received less than ten (10) months prior to that date.

J. The annual fee to be paid by a registrant shall be \$500 per property registered by a foreclosing creditor, and (2) an additional \$2,000 per property annually if the property is vacant or abandoned or becomes vacant or abandoned after the filing of a foreclosure action.

K. The registration statement shall be deemed prima facie proof of the statements contained therein in any enforcement proceeding or court proceeding instituted by the Borough against the registrant, creditor, or owner of the Property.

L. Any person or entity who is required by this Chapter to register Property and fails to do so, shall have consented to receive, by posting on the Property, in plain view, or by service of notice to the last known address of the title holder of the Property on record with the Borough Tax Officer by regular and certified mail, of any and all notices of violations, all process and other notices in proceedings brought to enforce the provisions of this Article.

SECTION 4. Chapter 183, Section 183-71 shall be amended to read as follows:

§183-71 Vacant and Abandoned Property Maintenance, Postings, Access. While Property is registered, or should be registered, the owner, creditor, and registrant shall comply with the following requirements:

A. The Property shall be enclosed and secured against unauthorized entry until the Property is occupied.

B. A sign shall be affixed to the inside of the Property and visible to the public outside the Property indicating the name, address and telephone number of the creditor, or an out-of-State creditor's in-State representative or agent for the purpose of receiving service of process. The sign shall also include the person or entity responsible for the day-to-day supervision and management of the Property is if such person or entity is different from the creditor. 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 eight (8") inches by ten (10") inches. The sign shall be maintained until the Property is occupied.

C. The exterior grounds, including areas within the front yard and side yard setbacks, and the fences, sidewalks, walkways, right-of-way(s), alleys, retaining walls, attached or unattached accessory structures and driveways, shall be well-maintained and free from trash, debris, loose litter, and grass and weed growth.

D. Liability insurance by procuring a vacancy policy, covering any damage to any person or any property caused by any physical condition of the Property while registered with the property registration program shall be acquired and otherwise maintained. Proof of such insurance shall be produced upon demand from the Borough.

E. Access shall be provided to Borough officials to conduct exterior and interior inspections of the Property to determine compliance with State and Borough codes, upon reasonable notice to the registrant or its designated agent. Such inspections shall be carried out on weekdays during the hours of 6:00 a.m. and 4:00 p.m., or such other time as may be mutually agreed upon between the registrant and the Borough.

SECTION 5. Chapter 183, Section 183-72 shall be amended to read as follows:

§ 183-72 Enforcement. The provisions of this Ordinance shall be enforced by the Code Enforcement Officer, Construction Official and/or the Zoning Officer (collective the "Enforcement Officer"), with the assistance of the Police Department, the Fire Prevention Bureau, and the Health Department, who

SECTION 6. Chapter 183, Section 183-73 shall be amended to read as follows:

§ 183-73 Notice of Violation. The Enforcing Officer shall issue a notice to the creditor filing the summons and complaint in an action to foreclose, if the Enforcing Officer determines that the creditor has violated this Article. In the case of a violation for failure to provide care, maintenance, security, and upkeep of the exterior of vacant and abandoned property, such notice shall require the person or entity to correct the violation within 30 days of receipt of the notice, or within 10 days of receipt of the notice if the violation presents an imminent threat to public health and safety.

SECTION 7. Chapter 183, Section 183-74 shall be amended to read as follows:

§183-74 Emergency conditions and Borough Intervention.

- A. Whenever the Enforcement Officer finds that an emergency condition in violation of this Ordinance exists, which condition requires immediate attention in order to protect the public health or safety, the Enforcement Officer may issue an order by service of notice as set forth above to the registrant reciting the existence of such an emergency condition and requiring that such action be taken by the violator within 10 days of receipt of notice.
- B. If, within the time permitted, the creditor or owner shall fail to abate the nuisance, correct the defect or defects or put the premises in proper condition so as to comply with the requirements of applicable ordinances and state laws or conditions of approval received from any board of the Borough, after notice thereof, the Enforcement Official shall forthwith file a report with the governing body of the Borough of Chester, which shall set forth in detail the condition(s) constituting the nuisance(s) or the defect(s) and shall contain a copy of the notice served upon the creditor or owner and the date and the manner thereof and a certification that such condition(s) still exist.
- C. Hearing; resolution to abate; expenditure of municipal funds.
 - (1) Upon the filing of the report by the Enforcement Official, a hearing shall be held upon on at least five (5) days' notice to the owner, served in the same manner as is provided in this Article. At such hearing, the Enforcement Official shall submit a report of its findings and recommendations to the Borough Council. If the governing body is of the opinion that remedial action is in the public interest, the governing body may adopt a resolution in the public's interest to abate the nuisance, to correct the defect or defects or to put the premises in proper condition so as to comply with the requirements of applicable ordinances and state laws or conditions of approval received from any board or agency of the Borough, at the cost and expense of the owner.
 - (2) The governing body may, by such resolution, also authorize the expenditure of municipal funds and fix the amount thereof for the purpose of correcting such conditions, and, in such cases where the nuisance or defect falls within a category for which there is statutory authority for the creating of a tax lien, such expenditure shall be charged against the Property, and the amount thereof shall be a lien against the property.
 - (3) The Enforcement Official or the Superintendent of Public Works, depending upon the volume of the work performed in accordance with the resolution at Borough's expense, not to exceed the amount specified in the resolution, and shall, upon completion thereof, submit a report of the monies expended and costs to the Borough Council.
 - (4) After review of the report, the Borough Council may approve the expenses and costs whereupon the same shall become a lien against the Property, collectible as provided by

law. A copy of the resolution approving the expenses and costs, whereupon the same, shall be certified by the Borough Clerk and filed with the Tax Collector of the Borough, who shall be responsible for the collection thereof, and a copy of the report and resolution for the collection, shall be sent by certified mail, return receipt requested, to the owner or creditor.

SECTION 8. Chapter 183 (Property Maintenance) of the Code of the Borough of Chester is amended to include a new Section 183-75 which shall read as follows:

§ 183-75 Violations and Penalties.

A. An owner or creditor who has violated any provision of this Chapter shall be subject to a fine of \$1,500 for each day of the violation. Any fines imposed pursuant to this paragraph shall commence 31 days following receipt of the notice of violation, except if the violation presents an imminent risk to public health and safety, in which case any fines shall commence 11 days following receipt of the notice.

B. Notwithstanding the foregoing, an out-of-State creditor who has violated the requirement of this Chapter to appoint an in-State representative or agent pursuant shall be subject to a fine of \$2,500 for each day of the violation. Any fines imposed pursuant to this paragraph shall commence on the day after the 10-day period set forth N.J.S.A 46:10B-51 or 40:48-2.12s2 for providing notice to the Borough Clerk that a summons and complaint in an action to foreclose on a mortgage has been served.

C. Any owner or other registrant who has violated any provision of this Chapter shall be subject to a fine of \$1,5000 for each day of the violation. Any fines imposed pursuant to this paragraph shall commence 31 days following receipt of the notice of violation, except if the violation presents an imminent risk to public health and safety, in which case any fines shall commence 11 days following receipt of the notice.

SECTION 9. If any Chapter, Article, Section or Subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction such decisions shall not affect the remaining portions of this Ordinance.

SECTION 10: All ordinances or rules or regulations of the Borough of Chester, which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 11: This ordinance shall take effect upon passage and publication according to law.

Dated: October 18, 2022

Janet Hoven, Mayor

Attest:

Robin Ghebreal, RMC, Municipal Clerk

LEGAL NOTICE OF PENDING ORDINANCE

Notice is hereby given that the Ordinance published herewith was introduced and passed upon first reading at a meeting of the Mayor and Council of the Borough of Chester, in the County of Morris, New Jersey, held on the 18th day of October 2022. It will be further considered for final passage after public hearing thereon, at a meeting of said Mayor and Council to be held in the Chester Borough Hall, 50 North Road, in said Borough, on November 22, 2022 at 7:00 p.m., and during the week prior and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's office in said Borough Hall building to members of the general public who shall request the same.

Robin Ghebreal, RMC, Municipal Clerk