

# Ordinance 2016-02

*BOROUGH OF HIGHTSTOWN  
COUNTY OF MERCER  
STATE OF NEW JERSEY*

## **AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 14, ENTITLED “PROPERTY MAINTENANCE”, OF THE “REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN.”**

**WHEREAS**, the Borough of Hightstown (the “Borough”) previously established regulations relating to vacant and abandoned properties located within the Borough, as set forth in Chapter 14, entitled “Property Maintenance,” of the “Revised General Ordinances of the Borough of Hightstown”; and

**WHEREAS**, the Mayor and Council wish to make certain revisions relating thereto, in accordance with the provisions set forth herein.

**NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED**, by the Mayor and Borough Council of the Borough of Hightstown, in the County of Mercer and State of New Jersey, that Chapter 14, entitled “Property Maintenance,” of the “Revised General Ordinances of the Borough of Hightstown” is hereby amended and supplemented in order to add the following (additions are shown with underline, deletions are shown with ~~striketrough~~):

### **Chapter 14 - PROPERTY MAINTENANCE**

#### **14-1 TITLE, POLICY AND PURPOSES**

##### 14-1.1 Title.

This chapter shall be known as the “Property Maintenance Code of the Borough of Hightstown” and may be referred to in the chapter in the short form as “The Property Maintenance Code” or as “this code.”

##### 14-1.2 Findings and Declaration of Policy.

It is hereby found and declared that there exists in the Borough of Hightstown structures used for residential and nonresidential purposes which are, or may become in the future, substandard with respect to structure, equipment or maintenance, and further, that such conditions including, but not limited to, structural deterioration, inadequate maintenance, infestation, inadequate provisions for light and air, and unsanitary conditions constitute a menace to the health, safety and welfare of the residents and inhabitants of the Borough of Hightstown. It is further found and declared that the existence of such conditions has the effect of creating blights and substandard neighborhoods, and that by the enactment

of timely regulations and restrictions as herein contained, the development of blight may be prevented and neighborhood and property values maintained, and the public health, safety and welfare protected and fostered.

#### 14-1.3 Purposes.

The purpose of this code is: to protect the public health, safety and welfare and to ensure the maintenance of property values by establishing minimum standards governing the maintenance, appearance, condition and occupancy of residential and nonresidential premises; to establish minimum standards governing facilities and other physical components and conditions essential to make the aforesaid facilities fit for human habitation, occupancy and use; to fix certain responsibilities and duties upon owners, operators and occupants; and to fix penalties for the violation of this code. This code is hereby declared to be remedial and essential for the public interest and it is intended that this code be liberally construed to effectuate the purposes as stated herein.

### **14-2 GENERAL PROVISIONS**

#### 14-2.1 Applicability to All Properties.

Every residential and nonresidential building and the premises upon which it is situated in the Borough of Hightstown, previously or presently used or intended to be used for dwelling, commercial, business or industrial occupancy, shall comply with the provisions of this code, whether or not such building shall have been constructed, altered or repaired before or after the enactment of this code, and irrespective of any permits or licenses which shall have been issued for the use or occupancy of the building, or for the installation or repair of equipment or facilities prior to the effective date of this code. This code establishes minimum standards for the initial and continued occupancy and use of all such buildings, and does not replace or modify standards otherwise established for the construction, repair, alteration or use of the building, equipment or facilities contained therein.

#### 14-2.2 Compliance required to obtain Certificate of Occupancy.

No certificate of occupancy, as set forth in Section 28-18.8 of the Revised General Ordinances of the Borough of Hightstown, shall be issued for any building unless it complies with the provisions of this Property Maintenance Code.

#### 14-2.3 Higher Standard to Prevail.

In any case where the provisions of this code impose a higher standard than set forth in any other ordinance of the Borough of Hightstown, or under the laws of the State of New Jersey, then the standards set forth herein shall prevail, but if the provisions of this code impose a lower standard than other ordinances of the Borough of Hightstown or of the laws of the State of New Jersey, then the higher standard contained in any such other ordinance or law shall prevail.

#### 14-2.4 Compliance Not a Defense.

No certification of compliance with this code shall constitute a defense against any violation of any other ordinance of the Borough of Hightstown applicable to any structure or premises.

#### 14-2.5 Conditions of Approval.

All conditions of approval incorporated in Resolutions or other acts of the Hightstown Borough Council or of any duly constituted board or agency of the Borough of Hightstown shall be adhered to and shall be construed to be continuing conditions of approval. Any on-site improvements of every kind or nature including, without limitation, sidewalks, curbs, landscaping, catch basins, storm drains and driveways installed pursuant to the requirements of the Hightstown Borough Council or of any duly constituted board or agency of the Borough of Hightstown shall be maintained in good and serviceable condition at all times.

#### 14-2.6 Responsibilities of Owner, Operator and Occupant to be Independent of Each Other.

- a. Owners and Operators. Owners and operators shall have all the duties and responsibilities as prescribed in this code, and no owner or operator shall be relieved from any such duties and responsibilities nor be entitled to defend against any charge of violation thereof by reason of the fact that the occupant is also responsible therefor and in violation thereof.
- b. Occupants. Occupants shall have all the duties and responsibilities as prescribed in this code, and the occupant shall not be relieved from any such duties and responsibilities nor be entitled to defend against any charge of violation thereof by reason of the fact that the owner or operator is also responsible therefor and in violation thereof.
- c. Contracts Not to Alter Responsibilities. Unless expressly provided to the contrary in this code, the respective obligations and responsibilities of the owner and operator on one hand, and the occupant on the other, shall not be altered or affected by any agreement or contract by and between any of the aforesaid or between them and other parties.

### **14-3 DEFINITIONS**

The following terms, wherever used or referred to in this code, shall have the respective meanings assigned to them unless in a different context:

“Accessory structure” shall mean a building or use that is: (a) on the same lot as; or (b) subordinate to; and (c) under the same ownership of control as; and (d) used for the purpose customarily incident to the use of the main building.

“Debris” (see also “Garbage,” “Junk,” “Litter,” and “Rubbish”) shall mean any grass, leaves, yard waste, parts of trees, stumps or any other similar material, construction waste, scrap lumber, scrap metal or any other similar material.

“Deterioration” shall mean the condition or appearance of a building or part thereof, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, lack of maintenance or excessive use.

“Exterior of the premises” shall mean those portions of a building which are exposed to view either from the street or public way, or from a neighboring property, and the open space of any premises outside of any building erected thereon.

“Garbage” (see also “Debris,” “Junk,” “Litter,” and “Rubbish”) shall mean putrescible animal and/or vegetable waste resulting from the handling preparation, cooking and/or consumption of food.

“Infestation” shall mean the presence of insects, rodents, vermin or other pests on the premises which constitute a health hazard.

“Junk” (see also “Debris,” “Garbage,” “Litter,” and “Rubbish”) shall mean any portions, parts or wholes of any usable or formerly usable item, including, but not limited to mattresses, bedding, furniture, inoperable lawnmowers and combustion engine devices, inoperable machinery, appliances or parts thereof, automobile parts, rubber tires, broken toys, bicycles or any similar material.

“Litter” (see also “Debris,” “Garbage,” “Junk,” and “Rubbish”) shall mean any used or unconsumed substance or waste material which has been discarded, including, but not limited to, any bottle, jar or can, or any top, cap or detachable tab of any bottle, jar or can, any lit or unlit cigarette, cigar or match, or any used petroleum products or other materials that are deemed hazardous by the New Jersey Department of Environmental Protection, or any garbage, rubbish, debris, newspaper, magazines, glass, metal, plastic or paper containers, or other packaging or construction material.

“Litter receptacle” shall mean a container suitable for the depositing of litter.

“Nuisance” shall mean:

- a. Any public nuisance known as common law or in equity jurisprudence, or as provided in the statutes of the State of New Jersey, or in the ordinances of the Borough of Hightstown.
- b. Any attractive nuisance which may prove detrimental to the health or safety of children, whether in a building or on an occupied or vacant lot. This includes, but is not limited to, abandoned wells, shafts, basements, excavations, abandoned freezers or refrigerators, any structurally unsound

fences or structures, scrap lumber, construction lumber, garbage, junk or debris.

- c. Physical conditions dangerous to human life or detrimental to the health of persons on or near the premises where the conditions exist.
- d. Unsanitary conditions or conditions which render air, food or drink detrimental to the health of human beings.

“Occupant” shall mean any person living in, sleeping in, or having actual possession of a dwelling unit or rooming unit.

“Owner” shall mean any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises with or without accompanying actual possession thereof; or shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as fiduciary, including but not limited to: executor, executrix, administrator, administratrix, trustee, receiver or guardian of the estate or as a mortgagee in possession regardless of how much possession was obtained. Any person who is a lessee subletting or reassigning any part or all of any dwelling unit shall be deemed to be a co-owner with the lessor and shall have joint responsibility over the portion of the premises sublet or assigned by said lessee.

“Premises” shall mean a lot, plot or parcel of land including the buildings or structures thereon.

“Rubbish” (See also “Garbage) shall mean all putrescible and nonputrescible solid wastes consisting of both combustible and noncombustible wastes, including, but not limited to, garbage, ashes, street cleanings, dead animals, abandoned automobiles, solid market and industrial wastes, paper and paper products, wrappings, cigarettes, aluminum cans, bottles, containers, yard clippings, leaves, wood, glass, bedding, pottery and similar materials

“Structure” shall mean anything that is built or constructed and permanently affixed on or under the ground or upon another structure or building.

#### **14-4 ADDRESS TO BE DISPLAYED**

All buildings, whether residential or nonresidential, shall have prominently displayed the address of said building in order to promote public safety in regard to fire, police and rescue. Said address shall be clearly visible from the curb line of said building or buildings at all hours of the day.

#### **14-5 GENERAL MAINTENANCE AND APPEARANCE**

14-5.1 Hazards and Structural Integrity.

- a. Hazards. The exterior of all premises and all structures shall be kept free of any hazards to the safety of occupants, pedestrians and other persons utilizing the premises, and any of the foregoing shall be promptly removed and abated. Such hazards and conditions include, but are not limited to, the following:
  - 1. Debris, garbage, litter, junk, and rubbish.
  - 2. Loose and overhanging objects including, without limitation, dead and dying trees and/or tree branches, accumulations of ice, or other similar conditions which, by reason of their location above ground level, constitute a hazard to persons in the vicinity thereof.
  - 3. Ground surface hazards including, without limitation, holes, excavations, breaks, projections and obstructions which constitute a hazard to persons using the premises, except during active construction if cordoned off in a visually obvious manner, as determined by the Construction Official.
- b. Foundation walls, piers, retaining walls and columns. Foundation walls, piers, retaining walls, columns or similar load-bearing components shall be kept structurally sound, free from defects and damage, and capable of bearing imposed loads safely.
- c. Exterior Facilities. Unsafe exterior facilities including, without limitation, exterior porches, landings, balconies, stairs and fire escapes, shall be kept structurally sound and in good repair and shall be provided with banisters or railings properly designated and maintained. Exterior walls, retaining walls, sidings and roofs shall be kept structurally sound, in good repair and free from defects.
- d. Painting and Other Protective Coating. All exposed surfaces susceptible to decay shall be kept, at all times, painted or otherwise provided with a protective coating sufficient to prevent deterioration. This provision shall not apply during the course of active construction projects for which a permit has been issued, provided that not more than six (6) months has expired since the issuance of such permit.
- e. Weather and Watertightness. Every dwelling shall be maintained so as to ensure weather and watertightness. Exterior walls, retaining walls, roofs, windows, window frames, doors, door frames, foundations and other portions of the structure shall be so maintained as to prevent water from entering the structure under normal conditions and to prevent excessive drafts. Damaged materials must be repaired or replaced promptly; places showing signs of rot, leakage, deterioration or corrosion are to be restored and protected against weathering or seepage.

#### 14-5.2 Appearance.

- a. All structures (including fences) shall be kept painted or whitewashed where necessary for purposes of preservation and appearance, free of broken glass, loose shingles, crumbling stone or brick, or excessive peeling paint.
- b. All properties, vacant or improved, shall be maintained free of any accumulation of debris, rubbish, recyclable material, garbage, junk or litter as defined herein.

#### 14-5.3 Excessive Exterior Lighting.

Exterior lighting fixtures shall be so hooded or shielded as to reflect the light away from abutting or neighboring residential property.

#### 14-5.4 Sidewalks, Driveways, Walkways and Entrance Stairways.

- a. It shall be the duty of the owner, lessee, tenant, occupant or person in charge or any structure to keep the sidewalk and curb abutting the building or structure free from obstruction or nuisances of every kind, and to keep sidewalks, areaways, backyards, courts and alleys free from litter.
- b. Sidewalks, driveways, walkways and entrance stairways shall be maintained in a safe condition, such as will not constitute a hazard to persons using the premises.
- c. Sidewalk repairs and maintenance shall comply with the provisions of Section 17-2 of the Revised General Ordinances of the Borough of Hightstown.
- d. The owner, occupant or tenant of premises abutting or bordering on any street in the Borough shall remove all snow and ice from abutting sidewalks of such street or, in the event of ice which may be so frozen as to make removal impracticable, shall cause the same to be thoroughly covered with sand or abrasive material within twelve (12) hours of daylight after it falls or is formed.
- e. The owner, occupant or tenant of premises used by the public or business invitees shall remove all snow and ice from the sidewalks, streets and parking areas used by the public in the transaction of business or, in the event of ice which may be so frozen as to make removal impracticable, shall cause the same to be thoroughly covered with sand or abrasive material within twelve (12) hours of daylight after it falls or is formed.

- f. No owner, tenant or occupant of any premises abutting on any street shall throw, place or deposit any snow or ice into or on any street in the Borough. The purpose of this provision is to prohibit any person from throwing, casting, placing or depositing snow and ice which accumulates on the private property belonging to that person onto the sidewalks or streets of the Borough.
- g. In case snow or ice is not removed from any sidewalks or is cast or deposited on the sidewalks or the street by the owner, tenant or occupant of any premises, it shall be removed under the direction of the Superintendent of Public Works, and the cost of removal as nearly as can be ascertained shall be certified by the Superintendent of Public Works to the Borough Council. The Council shall examine such certification and, if it is found to be correct, shall cause such cost to be charged against the real estate so abutting or bordering on such sidewalks. The amount charged shall become a lien and a tax upon the real estate or land and be added to, recorded and collected in the manner as the taxes next to be levied and assessed upon the premises and shall bear interest and be enforced and collected by the same officers and in the same manner as other taxes. The imposition and collection of a fine or any other penalty for violation of any of the provisions of this section shall not constitute any bar to the right of the Borough to collect the cost as certified for the removal of snow or ice in the manner herein authorized.

#### 14-5.5 Hedges, Brush and Grass.

- a. All properties shall be kept free of brush, grass and weeds (including but not limited to ragweed) of more than ten (10) inches in height, dead and dying trees, and obnoxious growth where same are inimical to the preservation of public health, safety or general welfare of the Borough or which may constitute a fire hazard.
- b. Trees, shrubs, hedges, etc. that are dead shall be removed and lawfully disposed of.
- c. In accordance with Section 13-3.1(h) of the Revised General Ordinances of the Borough of Hightstown, hedges and shrubbery must be kept trimmed so as not to overhang or obstruct the sidewalk.
- d. Hedges, trees and other “living fences” along property lines shall be kept pruned so that they do not impinge on neighboring properties.

#### 14-5.6 Waterways.

All waterways, brooks, drainage ditches and swales, to the extent that the same are located on or immediately adjacent to the premises, shall be maintained in good condition, free from debris, plantings or other obstructions.

### **14-6 LITTER AND DEBRIS**

#### 14-6.1 Littering Prohibited.

- a. It shall be unlawful for any person to throw, drop, discard or otherwise place litter of any nature upon any public or private property, other than a litter receptacle., or having done so, to allow such litter to remain.
- b. Whenever any litter is thrown or discarded or allowed to fall from a vehicle or boat in violation of this ordinance, the operator or owner, or both, of the motor vehicle or boat shall also be deemed to have violated this ordinance.

#### 14-6.2 Litter Receptacles.

Litter receptacles and their servicing are required at the following public places which exist in the Borough: buildings held out for use by the public, including but not limited to: schools and government buildings; parks; construction sites; gasoline service station islands; shopping centers; parking lots; and at special events to which the public is invited, including sporting events, parades, carnivals, circuses, concerts and festivals. The proprietors of these places or the sponsors of these events shall be responsible for providing and servicing the receptacles.

#### 14-6.3 Containerization of Sweepings.

No person shall sweep into or deposit in any gutter, street, catch basin or other public place any accumulation of litter from any public or private sidewalk or driveway. All litter sweepings shall be collected and properly containerized for disposal.

#### 14-6.4 Litter, Debris and Garbage.

All litter, debris and garbage must be lawfully disposed of in accordance with Section 18-1.13 of the Revised General Ordinances of the Borough of Hightstown, and shall not be placed at curbside before 5 p.m. on the day before collection. Empty containers shall be removed from the curbside by 8 p.m. on the collection day.

#### 14-6.5 Recyclables.

Recyclable materials shall be disposed of separately, in accordance with the provisions of Section 18-1 of the Revised General Ordinances of the Borough of Hightstown.

#### 14-6.6 Open or Overflowing Waste Disposal Bins.

It shall be unlawful for any residential or commercial property owner to permit open or overflowing waste disposal bins or dumpsters on his or her property, except that open construction dumpsters will be permitted subject to the requirements of Section 14-6.9 herein.

#### 14-6.7 Harboring of Rodents.

Non-elevated wood piles, poorly maintained compost piles of organic or non-organic yard and kitchen waste, or any accumulation of materials that will rot or decay, allowing infestation and habitats for rodents, insects, etc. shall not be permitted.

#### 14-6.8 Debris from Uncovered Vehicles.

It shall be unlawful for any vehicle to be driven, moved, stopped or parked on any public roadway unless such vehicle is constructed, covered or loaded to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom. Any person operating a vehicle from which any materials which constitute litter have fallen or escaped, or which could cause an obstruction, damage a vehicle or otherwise endanger travelers, pedestrians or public property, shall immediately cause the public property to be cleaned of all such materials and shall pay the cost therefor.

#### 14-6.9 Construction Sites.

It shall be unlawful for any owner, agent or contractor in charge of a construction or demolition site to permit the accumulation of litter before, during or immediately following completion of any construction or demolition project. It shall be the duty of the owner, agent or contractor in charge of a construction site to furnish containers adequate to accommodate flyable or non-flyable debris or trash at areas convenient to construction areas, and to maintain and empty the receptacles in such a manner and with such a frequency as to prevent spillage.

### **14-7 CONSTRUCTION EQUIPMENT, MATERIALS AND DEBRIS**

#### 14-7.1 Construction equipment, vehicles and/or construction materials.

No person shall keep, store or leave, either permanently or temporarily, any construction equipment, vehicle or construction materials on any residential lot within the Borough of Hightstown, which premises are not then currently being improved for development as the result of a permit issued by the Construction Code Official.

#### 14-7.2 Storage of Materials for New Construction; Time Allowed.

- a. New construction materials may be stored in the house or enclosed accessory structure, back yard or side yard only when it is for the use of a

construction project with an open permit, and the materials must be used or removed within six months of the beginning of the project. A driveway may be used for storage only in the event that no side yard or back yard space is accessible or available, and provided that the materials are not stored in front of the house. No construction materials shall be permitted to be stored in the front yard for more than 24 hours.

- b. Stored materials shall be elevated off the ground and covered to prevent harboring and infestation of rodents or insects.

#### 14-7.3 Debris from Construction or Demolition of Building; Time Allowed.

No person shall permit land to be covered with, or contain, refuse or debris resulting from the construction activities or the demolishing of a building, which refuse or debris has remained on the land for more than (a) 30 days after the completion of the construction activities or demolition work, or (b) six months after the permit for such activity or work was granted, whichever is soonest.

### **14-8 DUMPING PROHIBITED**

No person shall within the limits of the Borough throw, discard, dump, cast or deposit or permit to be maintained along any public street, highway or public place, or on or off any right-of-way, or on any private property, any household or commercial solid waste, rubbish, junk, garbage, litter, debris or other waste materials in any place not specifically approved by an appropriate governmental authority for the purpose of solid waste storage or disposal.

### **14-9 SPECIFIC REQUIREMENTS FOR NONRESIDENTIAL PROPERTIES**

In addition to all other provisions of this code, the following requirements shall apply to nonresidential properties in the Borough of Hightstown.

#### 14-9.1 Windows.

No storage of materials, stock or inventory shall be permitted in window display areas unless said areas are first screened from public view by drapes, Venetian blinds or other permanent rendering of the windows opaque to public view. All such screening of interiors shall be maintained in a clean and attractive manner and in a good state of repair.

#### 14-9.2 Store fronts.

All store fronts shall be maintained in good repair and all surfaces thereof shall be kept painted when necessary for purposes of preservation and appearance. In the event repairs to a portion of a store front are made, such repairs shall be performed with materials identical or compatible with the materials used in the area not undergoing repair, to the

end that the appearance of the store front shall be uniform and attractive and shall not constitute a blighting factor depreciating adjoining properties.

#### 14-9.3 Reconstruction.

All reconstruction of walls and siding shall be of standard quality and appearance commensurate with the character of the properties in the zoning district in which the premises are located, and materials used shall not be of a kind that, by their appearance under prevailing appraisals, practices and standards will depreciate the value of the neighboring and adjoining properties as aforesaid.

#### 14-9.4 Awnings and marquees.

Any awning or marquee and its accompanying structural members which extend over any street, sidewalk or other portion of the premises shall be maintained in good repair and shall not constitute a nuisance or a safety hazard. In the event such awning or marquees are not properly maintained in accordance with the foregoing, they shall, together with their supporting members, be removed forthwith. In the event said awnings or marquees are made of cloth, plastic or of a similar material, said material where exposed to public view shall be maintained in good condition and shall not show evidence of excessive weathering, discoloration, ripping, tearing or holes. Nothing herein shall be construed to authorize any encroachment on streets, sidewalks or other parts of the public domain.

#### 14-9.5 Signs, Light Stanchions and Poles.

All signs, including the structural and supporting components thereof, and all light stanchions and poles shall be maintained in good repair.

### **14-10 REGISTRATION AND MAINTENANCE OF VACANT AND ABANDONED RESIDENTIAL PROPERTIES IN FORECLOSURE**

#### a. Definitions

1. "Creditor" means a State chartered bank, savings bank, savings and loan association or credit union, any person or entity required to be licensed under the provisions of the "New Jersey Residential Mortgage Act," P.L. 2009, c.53 (C.17:11C-51 et seq.), any foreclosing entity subject to the provisions of C.46:10B-51 (P.L. 2008, c. 127, Sec. 17, as amended from time to time) and any entity acting on behalf of the creditor named in the debt obligation including, but not limited to, servicers.
2. "Vacant and Abandoned" residential property, [for purposes of this Section](#), means, consistent with section 1 of P.L. 2010, c.70 (C.2A:50-73), residential real estate, where a notice of violation has been issued pursuant to Paragraph e. 1 of this Section and subsection b. of section 1 of P.L.

2014, c.35 (C.40:48-2.12s). Residential property shall further be deemed Vacant and Abandoned where a mortgaged property is not occupied by a mortgagor or tenant and at least two of the following conditions exist:

- (a) overgrown or neglected vegetation;
- (b) the accumulation of newspapers, circulars, flyers or mail on the property;
- (c) disconnected gas, electric, or water utility services to the property;
- (d) the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (e) the accumulation of junk, litter, trash or debris on the property;
- (f) the absence of window treatments such as blinds, curtains or shutters;
- (g) the absence of furnishings and personal items;
- (h) statements of neighbors, association management, delivery persons, or government employees indicating that the residence is vacant and abandoned;
- (i) windows or entrances to the property that are boarded up or closed off or multiple window panes that are damaged, broken and unrepaired;
- (j) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
- (k) a risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
- (l) 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;
- (m) 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;

- (n) a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;
- (o) any other reasonable indicia of abandonment.

b. Registration of Vacant and Abandoned Properties

1. A Creditor filing a summons and complaint in an action to foreclose on a Vacant and Abandoned property, or a Creditor who has previously filed a summons and complaint to foreclose on a residential property which subsequently becomes Vacant and Abandoned, shall within thirty (30) calendar days after the building becomes Vacant and Abandoned or within thirty (30) calendar days after assuming ownership of the Vacant and Abandoned property, whichever is later; or within ten (10) calendar days of receipt of notice from the Borough, and annually thereafter, file a registration statement for such Vacant and Abandoned property with the municipal clerk on forms provided by the Borough for such purposes. Any failure to receive notice from the Borough shall not constitute grounds for failing to register the Vacant and Abandoned property.
2. Each Vacant and Abandoned property having a separate block and lot number as designated in the official tax maps of the Borough shall be registered separately.
3. The registration statement shall include the name, street address, telephone number, and email address (if applicable) of a person twenty-one (21) years or older, designated by the Creditor as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such Creditor in connection with the enforcement of any applicable code.
4. The registration statement shall include the name, street address, telephone number, and email address (if applicable) of the firm and the actual name(s) of the firm's individual principal(s) responsible for maintaining the Abandoned and Vacant property. The individual or representative of the firm responsible for maintaining the Abandoned and Vacant property shall be available by telephone or in person on a twenty-four-hour per day, seven-day per week basis. The two entities may be the same or different persons. Both entities shown on the statement must maintain offices in the State of New Jersey or reside within the State of New Jersey.
5. The registration shall remain valid for one year from the date of registration except for the initial registration which shall be valid through December 31st of the year in which it was filed. The Creditor shall be required to renew the registration annually as long as the building remains Vacant and Abandoned and shall pay a registration or renewal fee in the

amount prescribed in Paragraph c. of this Section for each Vacant and Abandoned property registered.

6. The annual renewal shall be completed by January 1st each year. The initial registration fee shall be pro-rated for registration statements received less than ten (10) months prior to that date.
7. The Creditor shall notify the municipal clerk within thirty (30) calendar days of any change in the registration information by filing an amended registration statement on a form provided by the municipal clerk for such purpose.
8. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the Borough against the Creditor.

c. Fee Schedule

The initial registration fee for each Vacant and Abandoned property under the provisions of this Section shall be five hundred (\$500.00) dollars. The fee for the first annual renewal shall be one thousand five hundred (\$1,500.00) dollars and the fee for the second annual renewal shall be three thousand (\$3,000.00) dollars. The fee for any subsequent annual renewal beyond the second renewal shall be five thousand (\$5,000.00) dollars.

d. Creditor Responsibility for Vacant and Abandoned Properties

1. A Creditor filing a summons and complaint in an action to foreclose on a residential property within the Borough shall be immediately responsible for the care, maintenance, security and upkeep of the exterior of the property, after the property becomes Vacant and Abandoned as defined in this Section.
2. Where a Creditor is located out-of-state, the Creditor shall be responsible for appointing an in-State representative or agent to act on the Creditor's behalf for the purpose of satisfying the requirements of Paragraph d. 1 of this Section. Notice of said representative or agent shall be provided to the municipal clerk pursuant to Paragraph b. 3 and 4 of this Section and pursuant to paragraph (1) of subsection a. of section 17 of P.L. 2008, c. 127 (C.46:10B-51).

e. Notice

1. The enforcement officers designated in this Section shall be authorized to issue a notice to a Creditor that has filed a summons and complaint in an

action to foreclose on a residential property within the Borough, if the enforcement officer determines that the Creditor has violated this Section by failing to provide for the care, maintenance, security, and upkeep of the exterior of a Vacant and Abandoned property.

Where a Creditor is an out-of-State Creditor, the notice shall be issued to the representative or agent that has been identified by the Creditor pursuant to Paragraph d. 2 of this Section and paragraph (1) of subsection a. of section 17 of P.L. 2008, c. 127 (C.46:10B-51).

2. The notice referenced in Paragraph e. 1 of this Section shall require the Creditor to correct the violation(s) 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.
3. The issuance of a notice pursuant to Paragraph e. 1 of this Section shall constitute proof that a residential property is Vacant and Abandoned for the purposes of this Section.

f. Enforcement Officers

The duty of administering and enforcing the provisions of this Section is conferred upon the municipal clerk, construction official, zoning officer, housing officer, health officer, Borough police, and any other duly appointed representatives, [including all municipal officials referenced in Section 14-12.1 of the Borough Code.](#)

g. Violations and Penalties

1. A Creditor subject to this Section that is found by the municipal court of the Borough, or by any other court of competent jurisdiction, to be in violation of the requirement to correct a care, maintenance, security, or upkeep violation cited in a notice issued pursuant to this Section 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 the receipt of the notice, 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.
2. An out-of-state Creditor subject to this Section that is found by the municipal court of the Borough, or by any other court of competent jurisdiction, to be in violation of the requirement to appoint an in-State representative or agent pursuant to this Section shall be subject to a fine of \$2,500 for each day of the violation. Any fines imposed on a Creditor for the failure to appoint an in-State representative or agent shall commence on the day after the 10-day period set forth in paragraph (1) of subsection

- a. of section 17 of P.L.2008, c. 127 (C.46:10B-51) for providing notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.
3. A Creditor subject to this Section that is found by the municipal court of the Borough, or by any other court of competent jurisdiction, to be in violation of the requirement to register a Vacant and Abandoned property pursuant to Paragraph b. of this Section shall be subject to a fine not exceeding two thousand (\$2,000.00) dollars. Any fines imposed on a Creditor under this Paragraph shall commence 11 days following receipt of notice from the Borough pursuant to Paragraph b. 1 of this Section.
  4. No less than 20 percent of any money collected by the Borough pursuant to this Section shall be utilized by the Borough for municipal code enforcement purposes.

## **14-11 ABANDONED PROPERTY**

### 14-11.1 Definitions.

“Abandoned Property” shall, for purposes of this Section, mean any building or structure which is not at present legally occupied or at which all lawful business or construction operations or residential or other occupancy have substantially ceased, and which is in such condition that it cannot legally be re-occupied without repair or rehabilitation, including but not limited to any property meeting the definition of abandoned property in N.J.S.A. 55:19-81; provided, however, that any habitable property where all building systems are in sound working order, where the building and grounds are maintained in good condition, and which is being actively marketed by its owner for sale or rental, shall not be deemed an abandoned property for purposes of this ordinance.

“Building” shall mean any building, or structure, or part thereof, whether used for human habitation or otherwise, and includes any outbuildings, and appurtenances belonging thereto.

“Interested Parties” includes any resident of the Borough, any owner or operator of a business within the Borough, or any organization representing the interests of residents, business owners or otherwise engaged in furthering the revitalization and improvements of the neighborhood in which the property is located.

“Lienholder” or “Mortgage Holder” shall mean any person or entity holding a note, mortgage, or other interest secured by a building or any part thereof.

“Owner” shall include the title holder, any agent of the title holder having authority to act with respect to an abandoned property, any foreclosing entity that has filed a notice with the municipal clerk pursuant to the provisions of C.46:10B-

51 (P.L.2008, c.127, Sec.17 as amended by P.L.2009, c.296), or any other entity determined by the public officer of the Borough to have authority to act with respect to the property.

“Property” shall mean any building or structure and the land appurtenant thereto.

“Public officer” shall mean a person designated or appointed pursuant to P.L. 1942, N.J.S.A. 40:48-2.5, or any officer of the municipality qualified to carry out the responsibilities set forth in N.J.S.A. 55:19-78, et seq., as designated by resolution of the Governing Body.

“Qualified Rehabilitation Entity” shall mean an entity organized or authorized to do business under the New Jersey statutes which shall have as one of its purposes the construction or rehabilitation of residential or nonresidential buildings, the provision of affordable housing, the restoration of abandoned property, the revitalization and improvement of urban neighborhoods, or similar purpose, and which shall be well qualified by virtue of its staff, professional consultants, financial resources, and prior activities to carry out the rehabilitation of abandoned buildings, as set forth under N.J.S.A. 55:19-80.

#### 14-11.2 Determination that property is abandoned; nuisance.

- a. Except as provided under N.J.S.A. 55:19-83, any property that has not been legally occupied for a period of six (6) months and which meets any 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 same six-month period; or
  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 six (6) months as of the date of a determination by the public officer; or
  3. At least one installment of property tax remains unpaid and delinquent on that property as of the date of a determination by the public officer; or
  4. The property has been determined to be a nuisance by the public officer, in accordance with N.J.S.A. 55-19-82 for one or more of the following reasons:

- (a) The property has been found to be unfit for human habitation, occupancy or use pursuant to N.J.S.A. 40:48-2.3;
- (b) The condition and vacancy of the property materially increases the risk of fire to the property and adjacent properties;
- (c) The property is subject to unauthorized entry leading to potential health and safety hazards; the owner 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 has failed to do so;
- (d) 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
- (e) 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.

b. A property which contains both residential and nonresidential space may be considered abandoned pursuant to N.J.S.A. 55:19-78, et seq., so long as two-thirds (2/3) or more of the total net square footage of the building was previously legally occupied as residential space and none of the residential space has been legally occupied for at least six (6) months at the time of the determination of abandonment by the public officer.

#### 14-11.3 Abandoned property list; notice to owner of record; challenge by the owner.

a. The Governing Body may direct the public officer to identify abandoned property for the purpose of establishing an abandoned property list throughout the Borough, or within those parts of the Borough as the Governing Body may designate. Each item of identified abandoned property shall include the tax block and lot number, the name of the owner of record, if known, and the street address of the property lot.

- b. The public officer shall establish and maintain a list of abandoned property, known as the “abandoned property list.” The Governing Body 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.
- c. Notice to owner.
1. The public officer shall establish the abandoned property list or any additions/deletions thereto in the official newspaper designated by the Borough. Within ten (10) days after publication in said newspaper, the public officer shall send a notice by certified mail, return receipt requested, and by regular mail, to the owner of record of every property included on the abandoned property list. The published and mailed notices shall identify the property determined to be abandoned setting forth the owner of record and, 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 mortgage, servicing organization, or property tax processing organization that receives a duplicate copy of the tax bill pursuant to N.J.S.A. 54:4-64(d).
  2. When the owner of record 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 N.J.S.A. 40:48-2.7, and shall specify the information relied upon in making such finding. In all cases, a copy of the mailed or posted notice shall also be filed by the public officer, in the office of the Clerk, County of Mercer. This filing shall have the same force and effect as a formal notice under N.J.S.A. 2A:15-6. The notice shall be captioned with the name of the Borough as “Plaintiff” and the name of the property owner as “Defendant,” as though an action had been commenced by the Borough against the owner.
- d. An owner or lienholder may challenge the inclusion of his/her/its property on the abandoned property list by appealing that determination to the Governing Body within thirty (30) days of the owner’s receipt of the certified notice or forty (40) days from the date upon which the notice was sent. An owner whose identity was not known to the public officer shall have forty (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 Governing Body shall accept a late filing of an appeal. Within thirty (30) days of receipt of a request for an appeal of the findings contained in the notice, the Governing Body 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, through the submission of an affidavit or certification asserting that the property is not an abandoned property, 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 that the property in question is not abandoned property as that term is defined herein and in N.J.S.A. 55:19-54. The Governing Body shall decide any timely filed appeal within ten (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 may challenge an adverse determination of an appeal with the Governing Body, by instituting, in accordance with the New Jersey Court Rules, a summary trial proceeding in the Superior Court, County of Mercer. Such action shall be instituted within twenty (20) days of the date of the notice of decision mailed by the Governing Body. The sole ground for appeal and new hearing before the Superior Court shall be that the property in question is not an abandoned property as that term is defined in N.J.S.A. 55:19-54. 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 Borough shall promptly remove any property from the abandoned property list that has been determined by the Governing Body on appeal not to be abandoned and may, in its discretion, remove properties from said list whenever the Governing Body deems such removal appropriate under the circumstances.
- g. The abandoned property list shall become effective, and the Borough shall have the right to pursue any legal remedy with respect to properties on the list at any time after at least one property has been placed on the list in accordance with the provisions of this Section, and following the expiration of the period for appeal with respect to that first property or upon the denial of an appeal brought by the property owner of that first property.

#### 14-11.4 Requests for additions to abandoned property list.

- a. Any interested party may submit a written request to the Municipal Clerk for the Governing Body, asserting that any property within the Borough should be included on the abandoned property list. The written request must specify the street address and block and lot number of the property to be included and the grounds for its inclusion. Within thirty (30) days of

receipt of any such request, the Governing Body shall provide a written response to the party, either indicating that the property will be added to the abandoned property list or otherwise stating the Governing Body's reasons for not adding the property. For the purposes of this section, the term "interested parties" shall include any resident of the Borough, any owner or operator of a business within the Borough, or any organization representing the interests of residents, business owners or otherwise engaged in furthering the revitalization and improvement of the neighborhood in which the property is located.

- b. Any interested party may participate in a redetermination hearing regarding the inclusion of property on the abandoned property list. Upon written request by any interested party, the Governing Body shall provide that party with at least twenty (20) days' notice of any such hearing. The party shall provide the Governing Body with notice at least ten (10) days before the hearing of its intention to participate and the nature of the testimony or other information that it proposes to submit at the hearing.

#### 14-11.5 Sale of tax lien; remediation costs.

- a. Sale of tax lien on abandoned property.

- 1. Notwithstanding N.J.S.A 54:5-19 or the provisions of any other law to the contrary, if a property is included on the abandoned property list and the property taxes or other Borough liens due on the property are delinquent six (6) or more quarters as of the date of expiration of the right to appeal inclusion on the list, or, if an appeal has been filed, as of the date that all opportunities for appeal of inclusion on the list have been exhausted, then the tax lien on the property may be sold in accordance with the procedures in the "Tax Sale Law," N.J.S.A. 54:5-1, *et seq.*, on or after the 90<sup>th</sup> day following the expiration of that time of appeal or final determination on appeal, as appropriate.
- 2. The Borough may, at its option, require that the sale of the tax sale certificate or any subsequent assignment or transfer of a tax sale certificate held by the Borough be subject to the express condition that the purchaser or assignee shall be obliged to perform and conclude any rehabilitation or repairs necessary to remove the property from the abandoned property list pursuant to N.J.S.A. 55:19-55. The Borough may further require that the purchaser or assignee post a bond of the Borough to guarantee the rehabilitation or repair of the property. The cost of rehabilitation and repairs and the cost of the bond shall be added to the amount required to be paid by the owner for the redemption of the property.

3. The public officer may waive a requirement to post a bond imposed by the Borough for any purchaser, assignee or transferee of a tax sale certificate that provides documentation acceptable to the public officer that the purchaser, assignee or transferee is a qualified rehabilitation entity as defined herein.
  4. The purchaser, assignee or transferee of the tax sale certificate who is required to rehabilitate and repair the property shall be required to file the appropriate affidavits with the Tax Collector, pursuant to N.J.S.A. 54:5-62, representing the amounts of monies expended periodically toward the rehabilitation or repair of the property. A purchaser, assignee or transferee shall be entitled to interest on the amounts expended, as set forth in the affidavits, at the delinquent rate of interest for delinquencies in excess of \$1,500.00 pursuant to N.J.S.A. 54:4-67, in effect for the time period when the amounts were expended.
  5. The tax sale certificate purchaser, assignee or transferee, under the auspices and with the authority of the Borough, shall be permitted to enter in and upon the property for the purposes of appraising the costs of rehabilitation and repair and to perform all other acts required to guarantee the completion of the rehabilitation or repair of the property. No rehabilitation or repair work shall be commenced, however, until proof of adequate liability insurance and an indemnification agreement holding the Borough harmless is filed with the public officer. If the tax sale certificate is not purchased at the initial auction of the tax sale certificate and the Borough purchases the certificate pursuant to N.J.S.A. 54:5-34, then the Borough is authorized and empowered to convey and transfer to the authority or any of its subsidiaries, without receiving compensation therefor, all of its right, title and interest in that certificate; however, any portion of the amount paid to the Tax Collector to redeem the tax sale certificate that represents tax or other Borough lien delinquencies and subsequent Borough liens, including interest, shall be returned by the Tax Collector of the Borough.
- b. If the Borough acquires the tax sale certificate for a property on the abandoned property list then, upon ten (10) days' written notice to the property owner and any mortgagee as of the date of the filing of the lis pendens notice under Subsection d. of N.J.S.A. 55:19-55, that entity shall be permitted to enter upon the property and remediate any conditions that caused the property to be included on the abandoned property list. No remediation shall be commenced, however, if within that ten-day period the owner or mortgagee shall have notified the Borough or authority or its subsidiary, as appropriate, in writing that the owner or mortgagee has

ected to perform the remediation itself. When the owner or mortgagee elects to perform the remediation itself, it shall be required to post bond in favor of the Borough in order to ensure performance. The amount and conditions of the bond shall be determined by the public officer.

- c. The cost of remediation incurred by the Borough pursuant to this section, as so certified by the entity incurring the cost upon completion of the remediation, shall constitute a lien upon the property first in time and right to any other lien, whether the other lien was filed prior to, or after the filing of any lien by the Borough, except for Borough taxes, lien and assessments on any lien imposed pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., together with any interest thereon. The certification of cost shall be filed and recorded as a lien by the entity incurring the cost with the county clerk register of deeds and mortgages, as appropriate, in the county in which the property is located.
- d. Failure of an owner or lienholder to remove a property from the abandoned property list within the period of time for appeal of inclusion of the property on the abandoned property list pursuant to this subsection shall be prima facie evidence of the intent of the owner to continue to maintain the property as abandoned property.
- e. The clearance, development, redevelopment, or repair of property being maintained as an abandoned property pursuant to this chapter shall be a public purpose and public use, for which the power of eminent domain may be exercised, pursuant to N.J.S.A. 20:3-1, et seq.

#### 14-11.6 Removal of property from list of abandoned properties; remediation.

- a. An owner may remove a property from the abandoned property list prior to sale of the tax sale certificate by paying all taxes and Borough liens due, including interest and penalties and:

  - 1. By posting cash or a bond equal to the cost of remediating all conditions because of which the property has been determined to be abandoned pursuant to Section 36 of P.L. 1996, N.J.S.A. 55:19-55 and posting cash or a bond to cover the cost to any environmental cleanup required on the property, evidenced by a certification by a licensed engineer retained by the owner and reviewed and approved by the public officer stating that the cash or bond adequately covers the cost of the cleanup; or
  - 2. By demonstrating to the satisfaction of the public officer that the conditions rendering the property abandoned have been remediated in full; provided, however, that where the public officer finds that the owner is actively engaged in remediating the conditions

because of which the property was determined to be abandoned pursuant to Section 36 of P.L. 1996, N.J.S.A. 55:19-55, as evidenced by significant rehabilitation activity on the property, the public officer may grant an extension of time of not more than one hundred twenty (120) days for the owner to complete all work, during which time no further proceedings will be taken against the owner of the property.

- b. If the owner has posted cash or a bond in order to have a property removed from the abandoned property list and the conditions because of which the property was determined to be abandoned have not been fully remediated within one year of the date of posting the cash or bond, or, in the case of a property which requires a remediation of any known, suspected or threatened release of contaminants, if the owner has failed to enter into a memorandum of agreement with the Department of Environmental Protection or an administrative consent order, as the case may be, or if an agreement or order is in effect but the owner has failed to perform the remediation in conformance with the agreement or order, then the cash or bond shall be forfeited by the Borough which shall use the cash or bond and any interest which has accrued thereon for the purpose of demolishing or rehabilitating the property or performing the environmental remediation. Any funds remaining after the property has been demolished, rehabilitated or cleaned up shall be returned to the owner.
  
- c. If a property, which an entity other than the municipality has purchased or taken assignment from the municipality of a tax 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 six months after the property was first placed on the list, the property shall be restored to the abandoned property list.

#### 14-11.7 Property deemed not abandoned; criteria; certification of abandonment.

- a. 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 the furtherance of rehabilitation work as authorized by said permits.
  
- b. If an entity or person other than the Borough has purchased or taken assignment for the Borough of a tax sale certificate on a property that has not been legally occupied for a period of six months, that property shall not be placed on the abandoned property list if:

1. The owner of the certificate has continued to pay all Borough taxes and liens on the property in the tax year when due; and
  2. The owner of the certificate takes action to initiate a foreclosure proceeding within six (6) months after the property is eligible for foreclosure pursuant to N.J.S.A. 54:5-86, and diligently pursues foreclosure proceedings in a timely fashion thereafter.
- c. Upon request of a purchaser or assignee of a tax sale certificate seeking to bar the right of redemption on an abandoned property pursuant to N.J.S.A. 54:5-86, the public officer or the Borough Tax Collector shall, in a timely fashion, provide the requester with a Certificate of Abandonment that the property satisfies the definition of an abandoned property in accordance with this chapter.

#### 14-11.8 Acquisition of tax sale certificate; action to foreclose right of redemption.

- a. When a person other than the Borough acquires a tax sale certificate for a property on the abandoned property list at tax sale, the purchaser may institute an action to foreclose the right of redemption at any time after the expiration of six (6) months following the date of the sale of the tax sale certificate.
- b. Notwithstanding the provisions of N.J.S.A. 54:5-104.34, when the Borough is the purchaser at tax sale of any property on the abandoned property list pursuant to N.J.S.A. 54:5-34, or when the Borough has acquired the tax sale certificate pursuant to N.J.S.A. 55:19-56, an action to foreclose the right of redemption may be instituted in accordance with the provisions of Subsection b. of N.J.S.A. 54:5-77. After the foreclosure action is instituted, the right to redeem shall exist and continue to exist until barred by the judgment of the Superior Court; provided, however, that no redemption shall be permitted except where the owner:
  1. Posts cash or a bond equal to the cost of remediating the conditions because of which the property was determined to be abandoned pursuant to N.J.S.A. 55:19-55, as determined by the Court; or
  2. Demonstrates to the Court that the conditions because of which the property was determined to be abandoned pursuant to N.J.S.A. 55:19-55 have been remedied in full.

#### 14-11.9 Special tax sale; criteria for bidders.

- a. The Borough may hold special tax sales with respect to those properties eligible for tax sale pursuant to N.J.S.A. 54:5-19 which are also on the abandoned property list.

- b. The Governing Body shall establish criteria for eligibility to bid on properties at the sale, which may include, but need not be limited to:
  - 1. Documentation of the bidder's ability to rehabilitate or otherwise reuse the property consistent with Borough plans and regulations, commitments by the bidder to rehabilitate or otherwise reuse the property, consistent with Borough plans and regulations;
  - 2. Commitments by the bidder to rehabilitate or otherwise reuse the property, consistent with municipal plans and regulations;
  - 3. Commitments by the bidder to take action to foreclose on the tax lien by a date certain; and
  - 4. Such other criteria as the Governing Body may determine are necessary to ensure that the properties to be sold will be rehabilitated or otherwise reused in a manner consistent with the public interest.
- c. The Governing Body may establish minimum bid requirements for a special tax sale that are less than the full amount of the taxes, interest and penalties due to help ensure that the properties will be rehabilitated or otherwise utilized in a manner consistent with the public interest.
- d. The Governing Body may combine properties in said special tax sale into bid packages and require that bidders place a single bid on each package, rejecting any and all bids on individual properties that are submitted.
- e. The Governing Body may sell said properties subject to the provision that, if the purchaser fails to carry out any commitment that has been set forth as a condition of sale or misrepresents any material qualification that has been established as a condition of eligibility to bid pursuant thereto, then the properties and any interest thereto acquired by the purchaser shall revert to the Borough, and any amount paid by the purchaser at the special tax sale shall be forfeit to the Borough.
- f. In the event there are two or more qualified bidders for any property or bid package in a special tax sale, the Borough may designate the unsuccessful qualified bidder whose bid was closest to the successful bid, as an eligible purchaser. In the event that the selected purchaser of that property or bid package fails to meet any of the conditions of sale established by the Borough pursuant to this section and their interest in the property or properties reverts to the Borough, the Borough may subsequently designate the entity previously designated as an eligible purchaser as the winning bidder for the property or properties, and assign the tax sale

certificates to that entity on the basis of that entity's bid at the special tax sale, subject to the terms and conditions of the special tax sale.

- g. The Borough shall provide notice of a special tax sale pursuant to N.J.S.A. 54:5-26. The notice shall include any special terms of sale established by the Borough pursuant to this section. Nothing shall prohibit the Borough from holding a special tax sale on the same day as a standard or accelerated tax sale.

#### 14-11.10 Expedited action to foreclose right of redemption.

- a. When a person or entity other than the Borough acquires a tax sale certificate for a property on the abandoned property list at tax sale, the purchaser may institute an action to foreclose the right of redemption at any time after the expiration of just six (6) months following the date of the sale of the tax sale certificate.
- b. When the Borough is the purchaser at tax sale of any property on the abandoned property list pursuant to N.J.S.A. 54:5-34, an action to foreclose the right of redemption may be instituted in accordance with the provisions of Subsection b. of N.J.S.A. 54:5-77.
  - 1. After the foreclosure action is instituted, the right to redeem shall exist and continue to exist until barred by the judgment of the Superior Court; provided, however, that no redemption shall be permitted except where the owner:
    - (a) Posts cash or a bond equal to the cost of remediating the conditions because of which the property was determined to be abandoned pursuant to N.J.S.A. 55:19-56, as determined by the Court; or
    - (b) Demonstrates to the Court that the conditions because of which the property was determined to be abandoned have been remedied in full.

#### 14-11.11 Transfer of possession and control to Borough.

- a. Transfer of possession.
  - 1. A summary action or otherwise to transfer possession and control of abandoned property in need of rehabilitation to the Borough may be brought by the Borough in the Superior Court, County of

Mercer. If the Court shall find that the property is abandoned pursuant to N.J.S.A. 55:19-81, and the owner or party in interest has failed to submit and initiate a rehabilitation plan, then the Court may authorize the Borough to take possession and control of the property and develop a rehabilitation plan.

2. If the Borough is granted possession, it may commence and maintain those further proceedings for the conservation, protection or disposal of the property or any part thereof that are required to rehabilitate the property, necessary to recoup the cost and expenses of rehabilitation and for the sale of the property; provided, however, that the Court shall not direct the sale of the property if the owner applies to the Court for reinstatement of control of the property as provided in N.J.S.A. 55:19-92.

3. Failure by the owner, mortgage holder or lien holder to submit plans for rehabilitation to the municipality, obtain appropriate construction permits for rehabilitation or, in the alternative, submit formal applications for funding the cost of rehabilitation to local, state or federal agencies providing such funding within that six-month period shall be deemed prima facie evidence that the owner has failed to take any action to further the rehabilitation of the property.

b. A complaint filed pursuant to section N.J.S.A. 55:19-84 and Subsection a of this section shall include:

1. Documentation that the property is on the municipal abandoned property list or a certification by the public officer that the property is abandoned; and

2. A statement by an individual holding appropriate professional qualifications that there are sound reasons that the building should be rehabilitated rather than demolished based upon the physical, aesthetic or historical character of the building or the relationship of the building to other buildings and lands within its immediate vicinity.

c. Within ten (10) days of filing a complaint, the plaintiff shall file a notice of lis pendens with the County of Mercer recording officer.

1. At least thirty (30) days before filing the complaint, the Borough shall serve a notice of intention to take possession of an abandoned building. The notice shall inform the owner and interested parties that the property has not been legally occupied for six (6) months

and of those criteria that led to a determination of abandonment pursuant to N.J.S.A. 55:19-81.

2. The notice shall provide that unless the owner or a party in interest prepares and submits a rehabilitation plan to the appropriate Borough officials, the Borough will seek to gain possession of the building to rehabilitate the property and the associated cost shall be a lien against the property, which may be satisfied by the sale of the property, unless the owner applies to the Court for reinstatement of control of the property as provided in N.J.S.A. 55:19-92.

3. After the complaint is filed, the complaint shall be served on the parties in interest in accordance with the New Jersey Rules of Court.

4. After serving the notice of intention pursuant to this subsection, the Borough may enter upon that property after written notice to the owner by certified mail, return receipt requested, in order to secure, stabilize or repair the property, or in order to inspect the property for purposes of preparing the plan to be submitted to the Court pursuant to N.J.S.A. 55:19-89.

d. Any owner may defend against a complaint filed pursuant to this section by submitting a plan for the rehabilitation and reuse of the property which is the subject of the complaint and by posting a bond equal to 125% of the amount determined by the public officer or the Court to be the projected cost of rehabilitation.

1. Any plan submitted by an owner to defend against a complaint shall be submitted within sixty (60) days after the complaint has been filed, unless the Court provides the owner with an extension of time for good cause shown.

2. A plan submitted by an owner pursuant to this subsection shall include, but not be limited to:

(a) A detailed financial feasibility analysis, including documentation of the economic feasibility of the proposed reuse, including operating budgets or resale prices, or both, as appropriate;

(b) A budget for the rehabilitation of the property, including sources and uses of funds, based on the terms and conditions of realistically available financing, including grants and loans;



the case may be, shall provide quarterly reports to the Court and the Borough on its activities and progress toward rehabilitation and reuse of the property.

- g. If the mortgage holder or lienholder fails to carry out any material step in the approved plan, then the public officer shall notify the Court, which may order the bond forfeit, grant the Borough possession of the property, and authorize the Borough to use the proceeds of the bond for rehabilitation of the property. Any sums incurred or advanced for the purpose of rehabilitating the property by a mortgage holder or lienholder granted possession of a property pursuant to this section, including Court costs and reasonable attorney's fees, may be added to the unpaid balance due that mortgage holder or lienholder, with interest calculated at the same rate set forth in the note or security agreement; or, in the case of tax lienholder, at the statutory interest rate for subsequent liens.

#### 14-11.12 Borough rehabilitation of property; submission of plan to Court.

- a. If no mortgage holder or lienholder meets the conditions of N.J.S.A. 55:19-88, then the Borough shall submit a plan to the Court which conforms with the provisions of N.J.S.A. 55:19-87. The plan shall designate the entity which shall implement the plan, which may be the Borough or that entity designated in accordance with the provisions of N.J.S.A. 55:19-90.
- b. The Court shall grant the Borough possession of the property if it finds that:

  - 1. The proposed rehabilitation and reuse of the property is appropriate and beneficial;
  - 2. The Borough is qualified to undertake the rehabilitation and reuse of the property; and
  - 3. The plan submitted by the Borough represents a realistic and timely plan for the rehabilitation and reuse of the property.
- c. The Borough shall take all steps necessary and appropriate to further the rehabilitation and reuse of the property consistent with the plan submitted to the Court. In making its findings pursuant to this section, the Court may consult with qualified parties, including the Department of Community Affairs, and, upon request by a part in interest, may holding a hearing on the plan.

#### 14-11.13. Borough exercise of rights to further rehabilitation and reuse of property;

designation of qualified rehabilitation entity.

- a. The Borough may exercise its right under N.J.S.A. 55:19-78, et als, directly, or may designate a qualified rehabilitation entity to act as its designee for the purpose of exercising the Borough's rights where that designation will further the rehabilitation and reuse of the property consistent with the Borough's plans and objectives. This designation shall be made by resolution of the Governing Body.
- b. Regardless of whether the Borough exercises its rights directly or designates a qualified rehabilitation entity pursuant to this section, while in possession of a property, the Borough shall maintain, safeguard, and maintain insurance on the property. Notwithstanding the Borough's possession of the property, nothing in this chapter shall be deemed to relieve the owner of the property of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner.
- c. If the Borough has been granted possession of a property pursuant to N.J.S.A. 55:19-89, the Borough shall be deemed to have an ownership interest in the property for the purpose of filing plans with public agencies and boards, seeking and obtaining construction permits and other approvals, and submitting applications for financing or other assistance to public or private entities.
- d. For the purposes of any state program of grants or loans, including but not limited to programs of the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency, possession of a property under this section shall be considered legal control of the property.
- e. The Court may approve the borrowing of funds by the Borough to rehabilitate the property and may grant a lien or security interests with priority over all other liens or mortgages other than municipal liens. For the purposes of this section, the cost of rehabilitation shall include reasonable non-construction costs such as professional fees, including but not limited to architectural fees, or construction permit fees customarily included in the financing of the rehabilitation of residential property.

f. The Borough shall file a notice of completion with the Court, and shall also serve a copy on the owner and any mortgage holder or lienholder, at such time as the Boorough has determined that no more than six (6) months remain to the anticipated date on which rehabilitation will be complete. This notice shall include an affidavit of the public officer attesting that rehabilitation can realistically be anticipated to be complete within that time period, and a statement setting forth such actions as it plans to undertake to ensure that reuse of that property takes place consistent with the plan.

g. Notwithstanding the granting of possession to the Borough, nothing in this chapter shall be deemed to relieve the owner of the property of any obligation the owner or any other person may have for the payment of taxes or other Borough liens and charges, or mortgages or liens to any party, whether those taxes, charges or liens are incurred before or after the granting of possession. The granting of possession shall not suspend any obligation the owner may have as of the date of the granting of possession for payment of any operating or maintenance expense associated with the property, whether or not billed at the time of the granting of possession.

14-11.14 Petition for reinstatement of control and possession by owner.

a. An owner may petition for reinstatement of the owner's control and possession of the property at any time after one (1) year from the grant of possession, but no later than thirty (30) days after the Borough has filed a Notice of Completion with the Court or, in the event the Notice of Completion is filed within less than one (1) year of the grant of possession, within thirty (30) days after the Borough has filed notice. The Court may allow additional time for good cause if that additional time does not materially delay completion of the rehabilitation, place undue hardship on the Borough, or affect any of the terms or conditions under which the Borough has applied for or received financing for the rehabilitation of the property.

b. Any petition for reinstatement of the owner's control and possession of the property shall:

1. Include a plan for completion of the rehabilitation and reuse of the property consistent with the plan previously approved by the Court;
2. Provide legally binding assurances that the owner will comply with all conditions of any grant or loan secured by the Borough or repay those grants or loans in full, at the discretion of the maker of the loan or grant; and
3. Be accompanied by payment equal to the sum of 1) all Borough liens outstanding on the property; 2) all costs incurred by the Borough in bringing action with respect to the property; 3) any costs incurred by the Borough not covered by grants or loans to be assumed or repaid pursuant to this section; and 4) any costs remaining to complete rehabilitation and reuse of the property, as determined by the public officer, which payment shall be placed in escrow with the Clerk of the Court, County of Mercer, pending disposition of the petition.

14-11.15 Obligations of owner prior to grant of petition.

- a. Prior to the granting of a petition on the part of the owner by the Court pursuant to §14-11.14, the owner may be required to post a bond or other security in an amount determined by the Court, after consultation with the public officer, as likely to ensure that the owner will continue to maintain the property in sound condition. That bond or other security shall be made available to the Borough to make any repair on the property in the event of a code violation which is not corrected in a timely fashion by the owner.
- b. The owner may seek approval of the Court to be relieved of this requirement after five (5) years, which shall be granted if the Court finds that the owner has maintained the property in good repair during that period, that no material violations affecting the health and safety of the tenants have occurred during that time period, and that the owner has remedied other violations in a timely and expeditious fashion.

14-11.16 Procedure of Borough seeking to gain title to property; authorization to

sell; proceeds.

- a. If the owner fails to petition for the reinstatement of control and possession of the property within thirty (30) days after the Borough has filed a notice of completion or in any event within two (2) years after the initial grant of possession, or if the owner fails to meet any conditions that may be set by the Court in granting a reinstatement petition, upon petition from the Borough, the Court may grant the Borough title or authorize the Borough to sell the property, subject to the provisions of N.J.S.A. 55:19-96.
- b. Where the Borough seeks to gain title to the property, it shall purchase the property for fair market value on such terms as the Court shall approve, and may place the proceeds of the sale in escrow with the Court.
- c. The Court may authorize the Borough to sell the building free and clear of liens, claims and encumbrances, in which event all such liens, claims and encumbrances shall be transferred to the proceeds of sale with the same priority as existed prior to resale in accordance with the provisions of this section, except that municipal liens shall be paid at settlement. The proceeds of the purchase of the property shall be distributed as set forth in N.J.S.A. 55:19-97.
- d. The Borough may seek approval of the Court to sell the property to a third party when the Court finds that such conveyance will further the effective and timely rehabilitation and reuse of the property.
- e. Upon approval by the Court, the Borough shall sell the property on such terms and at such price as the Court shall approve, and may place the proceeds of sale in escrow with the Court. The Court shall order a distribution of the proceeds of sale after paying Court costs in the order of priority set forth in N.J.S.A. 55:19-97. The proceeds paid pursuant to N.J.S.A. 55:19-96 shall be distributed in the following order of priority:
  1. The costs and expenses of sale;

2. Other governmental liens;
3. Repayment of principal and interest on any borrowing or indebtedness incurred by the Borough and granted priority lien status pursuant to Subsection a. of N.J.S.A. 55:19-98;
4. A reasonable development fee to the Borough consistent with the standards for development fees established for rehabilitation programs by the New Jersey Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency;
5. Other valid liens and security interests, in accordance with their priority; a and
6. The owner.

14-11.17 Public officer; authority to place lien on property; remedies.

The public officer, with the approval of the Court, may place a lien on the property to cover any costs of the Borough in connection with a proceeding under this chapter, incurred prior to the grant by the Court of an order of possession, which may include costs incurred to stabilize or secure the property to ensure that it can be rehabilitated in a cost-effective manner.

14-11.18 Eminent domain proceedings; establishment of fair market value.

- a. With respect to any eminent domain proceeding carried out under section N.J.S.A. 55:19-56, the fair market value of the property shall be established on the basis of an analysis which determines independently:
  1. The cost to rehabilitate and reuse the property for such purpose as is appropriate under existing planning and zoning regulations governing its reuse or to demolish the existing property and construct a new building on the site, including all costs ancillary to rehabilitation such as, but not limited to, marketing and legal costs.

2. The realistic market value of the reused property after rehabilitation or new construction, taking into account the market conditions particular to the neighborhood or subarea of the Borough in which the property is located; and
  3. The extent to which the cost exceeds or does not exceed the market value after rehabilitation, or demolition and new construction, and the extent to which any “as is” value of the property prior to rehabilitation can be added to the cost of rehabilitation or demolition and new construction without the resulting combined cost exceeding the market value as separately determined.
- b. If the appraisal finds that the cost of rehabilitation or demolition and new construction, as appropriate, exceeds the realistic market value after rehabilitation or demotion and new construction there shall be a rebuttable presumption in all proceedings under this subsection that the fair market value of the abandoned property is zero, and that no compensation is due the owner.

## ~~14-11~~ 14-12 ENFORCEMENT AND PENALTIES

### 14-~~11~~12.1 Enforcement officers.

The Construction Official, Fire Inspector, Fire Official, Fire Chief, Electrical Inspector, Plumbing Inspector, Housing Inspector, Health Officer or his/her designee, Health Department, ~~and~~ all police officers, and all municipal officials referenced in Section 14-10(f) of the Borough Code are authorized enforcement officers for the purposes of enforcing the provisions of this code. This Chapter shall also be enforced by the Code Enforcement Officer, whose position is hereby created, for the sole purpose of enforcing the provisions of this Chapter. The Code Enforcement Officer shall receive such salary as provided by Ordinance and shall be appointed by the Borough Council for a term as specified in the Resolution of Appointment.

### 14-~~11~~12.2 Procedure.

Except as otherwise set forth herein, ~~W~~ whenever any enforcement officer determines, after appropriate investigation, that there exists a violation of any provision of this chapter, he or she shall give written notice of such alleged violation to the person or persons responsible therefor. Such notice shall include a statement of the reasons for its issuance, and shall be served upon the owner or occupant of the premises, or the agent of either. Notice shall be deemed to be properly served if a copy thereof is served upon such person personally or sent by certified mail or registered mail to his last known address, or

posted in a conspicuous place in or about the premises affected by the notice. Such notice shall state that unless, within five calendar days from service of the notice, the condition complained of is abated, a municipal court summons will be issued and/or the Borough will undertake to abate the violation and place a lien on the property as hereinafter provided. A copy of the Notice shall be provided to the Borough Clerk.

#### 14-~~11~~12.3 Special Procedure in Emergency Conditions.

Whenever the enforcement officer finds that an emergency exists which requires immediate attention to protect the health or safety of the public, he or she may, without notice, issue and order reciting the existence of such an emergency and requiring that such action be taken as he or she deems necessary to meet the emergency. Notwithstanding any other provisions in this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but upon petition to the enforcement officer, shall be afforded a hearing as soon as possible. In the event that the order is disregarded by the property owner or person to whom the order is directed, the enforcement officer shall have the right to notify the Borough Clerk for the purpose of instituting immediate remedial action, the cost of which shall result in a lien on the premises. After such hearing, the enforcement officer shall continue such order in effect, or modify or withdraw it.

#### 14-~~11~~12.4 Violations and Penalties.

- a. General Penalty. Except as otherwise set forth herein, any person who shall violate any of the provisions of this chapter shall be subject to penalties as set forth in Section 1-5 of the Revised General Ordinances of the Borough of Hightstown. Each violation of any of the provisions of this chapter and each day that such violation shall continue shall be deemed to be a separate and distinct offense.
- b. Lien to be Placed on Property. In addition to the foregoing, and all other remedies available to the Borough, the Borough Treasurer, upon appropriate notification from the Mayor and Council and appropriate certification from the enforcement officer, shall place a lien on any property determined by the enforcement officer to be in violation of the provisions of this code, in the amount of any and all administrative expenses and any and all actual expenditures for work necessary in order to maintain the property and/or abate the violation, including the cost of removal of any offensive construction materials, refuse, hazards, overhanging objects or any other offending physical object. The lien placed upon such lands shall be added to and become and form a part of the taxes next to be assessed and levied upon such lands, the same to bear interest at the same rate as taxes, and shall be collected and enforced by the same officers and in the same manner as taxes. Costs shall be in addition to any penalties imposed for any violation of this Chapter.

**BE IT FURTHER RESOLVED**, that all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

**BE IT FURTHER RESOLVED**, that in the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable therefrom and shall not be affected.

**BE IT FURTHER RESOLVED**, that this Ordinance shall take effect following final passage and publication in accordance with the law.

Introduced:

Adopted:

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Debra L. Sopronyi  
Municipal Clerk

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Lawrence D. Quattrone  
Mayor