

Sponsor: Councilman Retzlaff
First Reading: 11/20/17
Second Reading: 12/04/17
Third Reading: 12/18/17
Ord. No.: 010-17

AN ORDINANCE TO AMEND CHAPTER 18 (“BUILDING AND BUILDING REGULATIONS”), ARTICLE XX (“ANNUAL REGISTRATION OF VACANT BUILDINGS AND REGISTRATION FEES”) TO REVISE AND CLARIFY THE PROCEDURES FOR ASSESSING VACANT BUILDING REGISTRATION FEES AND TO MAKE OTHER HOUSEKEEPING AMENDMENTS

WHEREAS, Article XX (“Annual Registration of Vacant Buildings and Registration Fees”) of Chapter 18 of the Town Code provides for the payment of vacant building registration fees for properties that are determined to be vacant under Article XX;

WHEREAS, Article XX is necessary to reduce the adverse effects vacant buildings can have on surrounding properties and the community as a whole; and

WHEREAS, in the opinion of the Town Council, it is necessary for the public health, safety, and welfare that the procedures for assessing vacant building registration fees be revised and clarified to reduce the possibility of misunderstandings and confusion regarding the assessment of vacant building registration fees.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Chapter 18, Article XX, Annual Registration of Vacant Buildings and Registration Fees, of the Town Code of the Town of Smyrna, be and hereby is amended as follows:

Section 1. Article XX (“Annual Registration of Vacant Buildings and Registration Fees”), section 18-1556 (“Purposes”) is hereby amended by making insertions as shown by underlining and deletions as shown by ~~strikethrough~~, as follows:

Sec. 18-1556. - Purpose.

The purpose of this section is to assist the town government, particularly the ~~department of planning and inspections (DPI)~~ Department of Building and Inspections, in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the town, to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter, the health and sanitation code, and any other applicable provisions of the Town of Smyrna Code.

Section 2. Article XX (“Annual Registration of Vacant Buildings and Registration Fees”), section 18-1557 (“Definitions and applicability; registration statement and fees”) is hereby amended by making insertions as shown by underlining and deletions as shown by ~~striketthrough~~, as follows:

Sec. 18-1557. - Definitions and applicability; registration statement and fees.

- (a) *Definitions.* For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:
- (1) *Boarded:* A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is ~~a sheet or sheets of~~ plywood or similar material covering the space for such door or window.
 - (2) *Exterior maintenance and major systems:* The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, drive-way, if any, area of the lot, as applicable and as enforced by the ~~department of planning and inspections~~ Department of Building and Inspections.
 - (3) *Occupied:* Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and/or sewer services; or the most recent, federal, state, or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of pre-rental inspection.
 - (4) *Open:* A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and, or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.
 - (5) *Owner:* An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.
 - (6) *Vacant:* A building or structure shall be deemed to be vacant if no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, non-transient basis.

- (7) Vacant building, habitually: Any building, whether residential or non-residential, that has been vacant for more than 90 consecutive days.
- (8) *Vacant, for sale or lease:* A vacant building or structure shall be deemed for sale or for lease if it is being actively marketed by a licensed real estate broker or owner who is regularly advertising the property in newspapers circulated in the Town of Smyrna, is offered at a price that is not more than 25 percent above the market value, and is in reasonable condition for sale or lease as determined by the town building official.
- (b) *Applicability.* ~~The requirements of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 60 consecutive days and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 60 consecutive days. Each such owner shall cause to be filed Registration and the payment of a registration fee shall be required for all habitually vacant buildings, whether vacant and secure, vacant and open or vacant and boarded. The property owner of a habitually vacant building, as determined by the Town's assessment records, shall have 30 days from the date the building qualifies as a habitually vacant building to file a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, and any other information deemed necessary by the Department of Building and Inspections department of planning and inspections. If the Town identifies a habitually vacant building where the property owner has not filed a registration statement within the required 30 days, the Town shall notify the property owner of the requirement to register the habitually vacant building and pay an annual registration fee. Annually thereafter, the property owner shall be required to provide the Town with an updated registration statement by December 31. In no instance shall the registration of a habitually vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all habitually vacant buildings of the owner so registering. The registration fee(s) as required by subsection (c) of this section shall be billed by the town and shall be paid by December 31 of each year.~~
- (c) *Registration statement and fees; local agent.* If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith.

~~Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for 60 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering.~~

In addition to the filing of an annual registration statement, the owner of a habitually vacant building shall be required to pay a non-refundable, annual vacant building registration fee. The owner of the vacant property as of November 30 of each calendar year, as determined by the town assessment records, shall be responsible for the payment of the non-refundable annual registration fee. Said fee shall be billed by the department of planning and inspections and Town by November 30 of each year in which a building was habitually vacant, with the fee being due by December 31. The deadline for sending out vacant building registration fee bills may be extended by the Town as long as property owners are given at least 30 days to pay the fee. Vacant building registration fees shall be based on the duration of the vacancy as determined by the following scale:

- (1) No fee for properties that are vacant \$500 for habitually vacant buildings that are vacant for less than one year, with the partial year consisting of the date the registration statement was filed by the property owner or the date the Town mailed notice to the property owner of the need to file a registration statement, whichever occurred first, through the end of the calendar year. This fee shall be waived for all property owners who filed their initial registration fee within 30 days of a building qualifying as a habitually vacant building, but it shall not be waived if the Town mails notice to the property owner of the need to file the registration statement;
- (2) \$500.00 for each of the next two calendar years thereafter that a habitually vacant building remains vacant (years one and two); ~~properties that are vacant for at least one year but less than two years;~~
- (3) \$1,000.00 for each of the next three calendar years thereafter that a habitually vacant building remains vacant (years three through five) ~~properties that are vacant for at least two years but less than five years;~~
- (4) \$2,000.00 for each of the next five calendar years thereafter that a habitually vacant building remains vacant (years six through ten), ~~properties that are vacant for at least five years, plus an additional \$500.00 for each year in excess of ten years.~~

A registration fee shall not be required for a habitually vacant building in any year in which the property owner has provided the Town with satisfactory proof of occupancy prior to November 1. The starting point for counting a building as being vacant shall begin on the effective date of this article.

- (d) *Appeal rights.* The owner shall have the right to appeal the imposition of the registration fees to the housing/building code board of appeals, upon filing an application in writing with the applicable ~~\$50.00~~ non-refundable filing fee (in the amount specified in the Town's fee schedule) to the ~~department of planning and inspections~~ Department of Building and Inspections no later than 15 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy, as defined herein.
- (e) *One-year time waiver of registration fee.* ~~A one-time~~ Upon application by the owner, a one-year waiver of the registration fee may be granted one time by the town manager or his/her designee ~~housing/building code board of appeals upon application of the owner~~ if the owner:

- (1) Demonstrates with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the habitually vacant building; and
 - (2) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the habitually vacant building; or
 - (3) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.
- (f) *Two-year waiver.* Upon application by the owner, ~~the housing/building code board of appeals may grant a two-year waiver of the registration fee~~ a two-year waiver of the registration fee may be granted one time by the town manager or his/her designee if the owner meets the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code. The two-year waiver is in lieu of, and may not be combined with, the one-year waiver authorized in subsection (e).
- (g) *Delinquent registration fees as a lien.* After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to subsection (d) above, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the town, and the town may commence a civil action to collect such the unpaid debt.
- (h) *Duty to amend registration statement.* If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, former owner, responsible party or agent for the same to contact the ~~department of planning and inspections~~ Department of Building and Inspections within 30 days of the occurrence of such change and advise the department in writing of those changes.
- (i) *Exceptions.* This section shall not apply to any building owned by the United States, the state, the town, nor to any of their respective agencies or political subdivisions.
- (j) *Violations; penalties.* The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a habitually vacant building or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than \$100.00 nor more than \$500.00 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100.00 is imposed, it shall not be subject to suspension or reduction for any reason.
- (k) *Denial of demolition permit.* No demolition permit shall be issued for the demolition of any ~~dwelling~~ building which is subject to the provisions of the building code requiring the annual registration of such ~~dwelling~~ building and the payment of vacant ~~dwelling~~ building registration fees if, as determined by the code official, the ~~dwelling~~ building has not been so registered or such registration fees have not been paid; provided, however, the building official may issue a demolition permit if in his judgment the immediate demolition of the ~~dwelling~~ building is required for the safety of nearby residents, or in an emergency, or if the code official determines that rehabilitation of such building ~~dwelling~~ is not financially feasible. Upon proper registration of such building ~~dwelling~~ and payment of vacant ~~dwelling~~ building registration fees, the building official may issue a demolition permit.

- (l) *Monitoring, inspection and condition standards.* The building official shall inspect any building in the town for purposes of this section, but the building official shall not access the interior of the building without first obtaining permission from the property owner or a lawfully issued warrant, and the owner of such building shall permit access to all parts of the interior upon request. The habitually vacant building shall be secured at all times. The habitually vacant building shall be kept in reasonable condition, all utilities shall be functional, there shall be no trash or debris inside or outside the building, and the building shall not be used as storage or in any other manner that is unrelated to its former use.
- (m) *Interpretation.* The town manager shall have the authority to make determinations regarding the ownership and/or responsible party for any building determined to be vacant pursuant to this section. All notices and bills shall be sent to the property owner's address as indicated on the registration statement. If a registration statement has not been filed with the Town, all notices and bills shall be sent to the property owner's address as identified in the Town's property assessment records.
- (n) All vacant building registration fees paid to the town pursuant to subsection (c) of this article and all penalties paid to the town pursuant to subsection (j) of this article shall be held in an account separate and apart from the general revenues of the town for use by the town to bring properties into the compliance with the Town Code whenever a property owner fails to perform the required remedial actions after having been duly notified by the town. The town shall make reasonable efforts to exhaust all available legal remedies to recover from the property owner any expenditure of funds made from this account. All funds recovered from such actions shall be deposited back into the special account until the amount exceeds \$50,000.00. Any amounts in excess of \$50,000.00 in the account may be transferred to the general fund by majority vote of the town council.

SYNOPSIS

This ordinance amends Chapter 18, Article XX, to clarify the procedures for registering habitually vacant buildings and the payment of vacant building registration fees. This ordinance clarifies that a property owner is required to file a vacant building registration statement within 30 days of the building qualifying as a habitually vacant building by being vacant for more than 90 days, and if the town identifies a habitually vacant building for which a registration statement has not been filed, the town will mail notice to the property owner of the need to file the statement. This ordinance clarifies how the vacant building registration fees will be calculated from the time the registration statement is filed or the notice is mailed by the town until proof of occupancy is provided to the town. This ordinance shifts the authority to grant waivers from the housing/building code board of appeals to the Town Manager and clarifies the requirement for the building inspector to obtain permission or a warrant prior to inspecting the interior of a building. All notices shall be mailed to the address on the registration statement, or if a registration statement has not been filed, notices shall be mailed to the owner's address in the town's property tax records. This ordinance makes various housekeeping changes including, but not limited to, updating the title of the Department of Building and Inspections, clarifying that the fee for an appeal shall be outlined in the Town's fee schedule, and clarifying the types of waivers that may be granted.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on _____, 2017.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in "The Smyrna Times" on _____, 2017 and posted at the Town Hall on _____, 2017.

So Certifies:

Town Clerk

This shall certify that the title, effective date and synopsis of this Ordinance was published in "The Smyrna Times" on _____, 2017 and posted at the Town Hall on _____, 2017.

So Certifies:

Town Manager