

First Reading: 01/16/07
Second Reading: 02/05/07
Third Reading: 04/16/07
ORD. NO.: 001-07
SPONSOR: Councilman Pressley

AN ORDINANCE TO AMEND CHAPTER 18 ("BUILDINGS AND BUILDING REGULATIONS") OF THE TOWN CODE OF THE TOWN OF SMYRNA TO ADD A NEW DIVISION FOR AN ARTICLE 1 OF THE CHAPTER TO REQUIRE ANNUAL REGISTRATION OF VACANT BULDINGS AND REGISTRATION FEES

WHEREAS, the municipal Charter of the Town of Smyrna (74 Laws of Delaware, Chapter 176, as amended) authorized and empowers the Town to take action to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, the Town Council, in section 6.8.2 of the Town Charter specifically grants the authority to enact ordinances relating to any subject within the powers and functions of the Town, its peace and order, its sanitation, beauty, health, safety, convenience, and property, and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances; and

WHEREAS, Title 25, Section 2901(a)(1)(j) of the Delaware Code specifically authorizes municipal governments to impose a lien for fees imposed by ordinance for registration of ownership of any vacant buildings; and

WHEREAS, Chapter 18 ("Buildings and Building Regulations") of the Town Code presently does not include a provision requiring registration and implementation of fees for vacant buildings in the Town; and

WHEREAS, the Town Council has determined that the peace, order, sanitation, beauty, health, safety, convenience and property of the Town will be protected and improved by adopting an ordinance to require registration of vacant buildings and fees for said registration;

BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring and Council duly met, that Chapter 18 ("Buildings and Building Regulations")

of the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend by adding to Chapter 18 a new Article XX. ANNUAL REGISTRATION OF VACANT BUILDINGS AND REGISTRATIONS FEES, as follows:

**ARTICLE XX
ANNUAL REGISTRATION OF VACANT BUILDINGS AND REGISTRATION FEES**

Sec. 18-1556. Purpose.

The purpose of this section is to assist the Town government, particularly the Department of Planning & Inspections (DPI) 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.

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 & 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, 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% 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 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 Planning & Inspections. 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.

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 & Inspections and based on the duration of the vacancy as determined by the following scale:

- (1) No fee for properties that are vacant for less than one year;
- (2) \$500.00 for properties that are vacant for at least one year but less than two years;
- (3) \$1,000.00 for properties that are vacant for at least two years but less than five years;
- (4) \$2000 for properties that are vacant for at least five years, plus an additional \$500.00 for each year in excess of ten years.

The starting point for counting a building as being vacant shall begin on the effective date of this ordinance.

(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 to the Department of Planning & 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 time waiver of registration fee.* A one-time waiver of the registration fee may be granted by the

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 vacant building; and

(2) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the 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 if the owner meets the criteria for non-profit organizations as defined by section 501(c)(3) of the Internal Revenue Code.

(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 & 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 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 which is subject to the provisions of the Building Code requiring the annual registration of such dwelling and the payment of vacant dwelling registration fees if, as determined by the code official, the dwelling 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 is required for the safety of nearby residents, or in an emergency, or if the code official determines that rehabilitation of such dwelling is not financially feasible. Upon proper registration of such dwelling and payment of vacant dwelling 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, and the owner of such building shall permit access to all parts of the interior upon request. The vacant building shall be secured at all times. The 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 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.

Section 2. This Ordinance shall be effective

SYNOPSIS

This Ordinance amends Chapter 18, ("Buildings and Building Regulations") of the Town Code to include a new Article XX requiring the annual registration of vacant buildings and registration fees. The Ordinance includes definition, registration requirements, fee structure, an explanation of appeal rights, procedures for waiver of the registration fee, consequences for delinquency in payment of registration fee, amendment requirements to the registration statement, exceptions, violations and penalties, and the applicability of demolition permits to vacant buildings.

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 _____, 2007.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this ordinance were published in the Smyrna/Clayton Sun Times on _____, 2007 and a copy posted at the Town Hall on _____, 2007.

Date

Town Clerk

This shall certify that the title, synopsis and effective date of this ordinance were published in the Smyrna/Clayton Sun Times on _____, 2007 and a copy posted at the Town Hall on _____, 2007.

Date

Town Clerk