

ORDINANCE NO. 2160-16

AN ORDINANCE TO FURTHER AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF HAWTHORNE SO AS TO AMEND CHAPTER 370, PROPERTY MAINTENANCE, SO AS TO CREATE ARTICLE II, VACANT AND ABANDONED PROPERTIES, AND ARTICLE III, REGISTRATION OF CREDITORS IN FORECLOSURES, SETTING FORTH REQUIREMENTS AND RESPONSIBILITIES FOR OWNERS AND RESPONSIBLE PARTIES OF SUCH PROPERTIES IN THE BOROUGH OF HAWTHORNE

WHEREAS, the Municipal Council of the Borough of Hawthorne finds that vacant and abandoned properties can lead to neighborhood decline, become attractive nuisances and cause the Borough to expend time and expense by way of code enforcement actions in attempting to gain compliance and protect the public; and

WHEREAS, it is in the public interest to establish minimum standards for accountability of owners or other responsible parties of vacant or abandoned properties including registration of such structures and payment of corresponding fees in order to protect the health, safety and general welfare of residents of the Borough and avoid the imposition of undue costs upon the taxpayers of the Borough;

NOW THEREFORE, BE IT ORDAINED, by the Municipal Council of the Borough of Hawthorne, in the County of Passaic and State of New Jersey, that:

Section 1. Chapter 370, Property Maintenance, is hereby amended so as create Three Articles thereunder, Article I being Property Maintenance Code, covering all existing sections of such Code Section, Article II being Vacant and Abandoned Properties, and Article III being Registration of Creditors in Foreclosure, the entire Code Section as revised and amended to read as follows:

CHAPTER 370
PROPERTY MAINTENANCE

ARTICLE I
PROPERTY MAINTENANCE CODE

- § 370-1 Adoption of Standards
- § 370-2 Amendments, Additions and Deletions
- § 370-3 Construal
- § 370-4 Statutory Authority; Codes on File

ARTICLE II
VACANT AND ABANDONED PROPERTIES

- § 370-5 Definitions
- § 370-6 Registration Requirements
- § 370-7 Access to Vacant Properties
- § 370-8 Responsible Owner or Agent
- § 370-9 Fee Schedule
- § 370-10 Requirements of Owners of Vacant/Abandoned Properties
- § 370-11 Violations and Penalties

ARTICLE III
REGISTRATION OF CREDITORS IN FORECLOSURES

- § 370-12 Registration of Creditors in Foreclosures Required
- § 370-13 Violations

ARTICLE I
PROPERTY MAINTENANCE CODE

Section 370-1 Adoption of standards [Amended 7-16-2008 by Ord. No. 1946-08]

The International Property Maintenance Code, Sixth Edition, 2006, or such edition as may hereafter be published as successor to the 2006 edition, be and it is hereby adopted as the Property Maintenance Code of the Borough of Hawthorne, in the County of Passaic, State of New Jersey; for

the control of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said International Property Maintenance Code, Sixth Edition, 2006, or any successor edition thereto, are hereby referred to, adopted and made a part hereof as if fully set forth in this chapter with the additions, comments, insertions, deletions and changes prescribed in Section 370-2 of this chapter. The International Property Maintenance Code, Sixth Edition, 2006, as herein adopted, shall be and become Chapter 370, Property Maintenance, of the Code of the Borough of Hawthorne.

Section 370-2 Amendments, additions and deletions. {Amended 7-18-2007 by Ord. No. 1910-07; 3-19-2008 by Ord. No. 1929-08; 7-16-2008 by Ord. No. 1946-08}

The International Property Maintenance Code, Sixth Edition 2006, is hereby amended and revised in the following respects:

- A. Section 101.1: insert Borough of Hawthorne.
- B. Section 104.1 change to: The Code Official shall issue all necessary notices, orders, and/or summonses to ensure compliance with this code.
- C. Section 111: delete entire section Appeals Board.
- D. Section 302.4: weeds: seven inches.
- E. Section 302.8: change to: Except as provided for in other regulations, no inoperative, unlicensed, or with outdated inspection sticks motor vehicle or trailer.
- F. Section 304.14: insect screens: May 1 to October 1.
- G. Section 307.3: add: All containers shall have address numbers on them.
- H. Section 307.3.2: add: Any operational refrigerators, freezers stored on exterior of building must be securely locked to prevent unauthorized entry.
- I. Section 602.3: heat requirements: October 1 to May 1 6:00 a.m. to 11:00 p.m.: 68 degrees, 11:00 p.m. to 6:00 a.m.: 65 degrees.
- J. Section 602.4: occupiable work space: October 1 to May 1.

Section 370-3 Construal

Nothing in this chapter nor in the Property Maintenance Code hereby adopted shall be construed to affect any proceeding pending in any court, or any rights acquired or liability incurred, or any cause or causes of action, acquired to existing under any act or ordinance hereby repealed under this chapter; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this chapter.

Section 370-4 Statutory authority; codes on file. {Amended 7-16-2008 by Ord. No. 1946-08}

This chapter is adopted pursuant to the authority of N.J.S.A. 40:69A-181(a). This chapter incorporates and adopts by reference, subject to the terms of Section 370-2 hereof, the International Property Maintenance Code, Sixth Edition 2006. Ten copies of said Code have been placed on file in the Office of the Municipal Clerk and in the Office of the Code Official for the examination of the public so long as this chapter is in effect.

ARTICLE II
VACANT AND ABANDONED PROPERTY

Section 370-5 Definitions.

Owner - shall include the title holder, any agent of the title holder having authority to act with respect to a vacant/abandoned property, any foreclosing entity subject 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 Borough of Hawthorne to have authority to act with respect to the property.

Vacant Property – any building used or to be used as a residence, commercial or industrial structure which is not legally occupied or at which substantially all lawful construction operations or occupancy has ceased, and which is in such condition that it cannot legally be reoccupied without repair or rehabilitation, including but not limited to any property meeting the definition of abandoned property in N.J.S.A. 55:19-54, 55:19-78, 55:19-79, 55:19-80 and 55:19-81; provided, however, that any property where all building systems are in working order, where the building and grounds are maintained in good order, or where the building is in habitable condition, and where the building is being actively marketed by its owner for sale or rental, shall not be deemed a vacant property for purposes of this ordinance.

Abandoned Property – pursuant to N.J.S.A. 55:19-81 is defined as follows:

Any property that has not been legally occupied for a period of six months and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the public officer that:

- a. The property is in need of rehabilitation in the reasonable judgment of the public officer, and no rehabilitation has taken place during the six months period;
- b. 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 months as of the date of a determination by the public officer pursuant to this section;
- c. At least one installment of property tax remains unpaid and delinquent on that property in accordance with chapter 4 of title 54 of the Revised Statutes of the date of the determination by the public officer pursuant to this section; or
- d. The property has been determined to be a nuisance by the public officer in accordance with section 5 of P.L. 2003, c. 210 (C.55:19-82). A property which contains both residential and non-residential space may be considered abandoned pursuant to P.L. 2003, c. 210 (C. 55:19-78 et al.) so long as two-thirds or more of the total net square footage of the building was previously legally occupied as residential or commercial space and none of the residential or commercial space has been legally occupied for at least six months at the time of the determination of abandonment by the public officer and the property meets the criteria of either subsection a. or subsection d. of this section.

Section 370-6 Registration Requirements

The owner of any vacant property as defined herein shall, within 30 calendar days after the building becomes vacant property or within 30 calendar days after assuming ownership of the vacant property, whichever is later; or within 10 calendar days of receipt of notice by the municipality, file a registration statement for such vacant property with the Property Maintenance Inspector on forms provided by the Borough for such purposes. Failure to receive notice by the municipality shall not constitute grounds for failing to register the property.

- a. Each property having a separate block and lot number as designated in official records of the municipality shall be registered separately.
- b. The registration statement shall include the name, street address, telephone number, and email address (if applicable) of a person 21 years or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceedings on behalf of such owner or owners in connection with the enforcement of any applicable code; and the name, street address, telephone number, and email (if applicable) of the firm and the actual name of the firm's individual principal responsible for maintaining the property. The individual or representative of the firm responsible for maintaining the property shall be available by telephone or in person on a 24 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.
- c. The registration shall remain valid for one year from the date of registration except for the initial registration which shall be pro-rated through December 31. The owner shall be required to renew the registration annually as long as the building remains a vacant and/or abandoned property and shall pay a registration or renewal fee in the amount prescribed in Section 370-7 of this ordinance, for each vacant property registered.
- d. 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 10 months prior to that date.

e. The owner shall notify the Property Maintenance Inspector within 30 calendar days of any change in the registration information by filing an amended registration statement on a form provided by the Property Maintenance Inspector for such purpose.

f. 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 owner or owners of the building.

Section 370-7 Access to vacant properties.

The owner of any vacant property registered under this Article shall provide access to the Borough to conduct exterior and interior inspections of the building to determine compliance with municipal codes, upon reasonable notice to the property owner or the designated agent. Such inspections shall be carried out on weekdays during the hours of 9:00 a.m. and 4:00 p.m. or such other time as may be mutually agreed upon between the owner and the Borough.

Section 370-8 Responsible owner or agent.

a. An owner who meets the requirements of this Article with respect to the location of his or her residence or workplace in the State of New Jersey may designate him or herself as agent or as the individual responsible for maintaining the property.

b. By designating an authorized agent under the provisions of this section the owner consents to receive any and all notices of code violations concerning the registered vacant property and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the registered building by service of the notice or process on the authorized agent. Any owner who has designated an authorized agent under the provision of this section shall be deemed to consent to the continuation of the agent's designation for the purposes of this section until the owner notifies the Borough in writing of a change of authorized agent or until the owner files a new annual registration statement.

c. Any owner who fails to register vacant/abandoned property under the provisions of this Article shall further be deemed to consent to receive, by posting on the building, in plain view, and by service of notice at the last known address of the owner of the property on record within the Borough by regular and certified mail, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

Section 370-9 Fee Schedule.

The initial registration fee for each building five hundred (\$500.00) dollars. The fee for the first renewal is one thousand five hundred (\$1,500.00) dollars and the fee for the second renewal is two thousand five hundred (\$2,500.00) dollars. The fee for any subsequent renewal beyond the second renewal is three thousand (\$3,000.00) dollars.

Vacant Property Registration Fee Schedule

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|----------------------|------------|
| Initial Registration | \$ 500.00 |
| First Renewal | \$1,500.00 |
| Second Renewal | \$2,500.00 |
| Subsequent Renewal | \$3,000.00 |

Section 370-10 Requirements of owners of vacant/abandoned properties.

The owner of any building that has become vacant/abandoned property, and any person maintaining or operating or collecting rent for any such building that has become vacant shall, within thirty (30) days thereof;

1. Enclose and secure the building against unauthorized entry as provided in the applicable provisions of the Borough Code, or as set forth in the rules and regulations supplementing those codes; and
2. Post a sign affixed to the building indicating the name, address and telephone number of the owner, the owner's authorized agent for the purpose of service of

process, and the person responsible for day-to-day supervision and management of the building, if such person is different from the owner holding title or authorized agent. The sign shall be of a size and placed in such a location so as to be legible from the nearest public street or sidewalk, whichever is nearer, but shall be no smaller than eight (8) inches by ten (10) inches; and

3. Secure the building from unauthorized entry and maintain the sign until the building is again legally occupied or demolished or until repair or rehabilitation of the building is complete; and

4. Ensure that the exterior grounds of the structure, including yards, fences, sidewalks, walkways, right-of-ways, alleys, retaining walls, attached or unattached necessary structures and driveways, are well-maintained and free from trash, debris, loose litter and grass and weed growth; and

5. Continue to maintain the structure in a secure and closed condition, keep the grounds in a clean and well-maintained condition, and ensure that the sign is visible and intact until the building is again occupied, demolished, or until repair and/or rehabilitation of the building is complete.

Section 370-11 Violations

a. Any person who violates any provision of this Article or the rules and regulations issued hereunder shall be fined not less than \$200.00 and not more than \$2,000.00 for each offense. Every day that a violation continues shall constitute a separate and distinct offense. Fines assessed under this chapter shall be recoverable from the owner and shall be a lien on the property.

b. For purposes of this section, failure to file a registration statement within 30 calendar days after a building becomes vacant property or within 30 calendar days after assuming ownership of a vacant property, whichever is later, or within 10 calendar days of receipt of notice by the municipality, and failure to provide correct information on the registration statement, or failure to comply with the provisions of such provisions contained herein shall be deemed to be violations of this ordinance.

ARTICLE III REGISTRATION OF CREDITORS IN FORECLOSURES

Section 370- 12 Registration of Creditors in Foreclosures Required

Pursuant to the provisions of NJSA 40:48-2.12s, the creditor filing a summons and complaint in an action to foreclose shall be responsible for the care, maintenance, security and upkeep of the exterior of the vacant and abandoned residential property. This obligation applies whether the determination that the property is vacant and abandoned is made pursuant to this Code, NJSA 2A:50-73, or as otherwise provided by law. Upon the filing of a Summons and Complaint in foreclosure, the creditor shall file with the Borough a notice setting forth a registered agent for service of notice and process. If the creditor is an out-of-State creditor, the creditor shall be responsible for appointing an in-State creditor or agent to act for the foreclosing creditor. The out-of-State creditor shall include the full name and contact information of the in-State representative or agent in the notice to be provided to the Municipal Clerk in accordance with NJSA 46:10B-51(a)(1).

Section 370-13 Violations and Penalties

a. An out-of-State creditor found by the municipal court, or any other court of competent jurisdiction, to be in violation of the above section requiring registration shall be subject to a fine in minimum sum of \$2,500 for each day the violation continues, commencing after the ten (10) day period set forth in NJSA 46:10B-51(a)(1) for providing notice to the Municipal Clerk that a summons and complaint in a foreclosure action has been served.

b. The Zoning Officer, Housing Officer, Construction Official, Code Enforcement Officer or any other public officer appointed pursuant to NJSA 40:48-2.3 et. seq. shall be authorized to issue notice to the creditor filing the summons and complaint in a foreclosure action, if the public officer determines that the creditor has violated this chapter by failing to provide for the care, maintenance, security and upkeep of the exterior of the property. The notice shall require the person or entity to correct the violation within

thirty (30) days of receipt of the notice, or within ten (10) days of receipt of the notice if the violation presents an imminent threat to public health and safety. The issuance of such notice shall constitute proof that the property is vacant and abandoned as set forth at law. A creditor found by the municipal court, or by any other court of competent jurisdiction, to be in violation of the requirement to care, maintain, secure or provide up-keep property in violation of this section shall be subject to a fine of \$1,500 for each day of the violation, commencing thirty-one (31) days following receipt of notice, except if the violation presents an imminent risk to public health and safety, in which case the fines shall commence eleven (11) days following receipt of the notice.

Section 2. If any section, subsection or part of this ordinance is adjudged by a Court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not impair or invalidate the remainder of this ordinance.

Section 3. The remaining portion of Chapter 370, Property Maintenance, shall remain in full force and effect except as modified hereunder. All parts and provisions of any ordinance which are inconsistent with the provisions of this ordinance shall be repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect upon final adoption and publication as provided by law.

John Bertollo, Council President

Attest:
Lori DiBella, RMC
Borough Clerk

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed upon first reading at a meeting of the Municipal Council of the Borough of Hawthorne, in the County of Passaic, New Jersey, held on April 6, 2016. It will be further considered for final passage after public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 445 Lafayette Avenue, in said Borough on May 4, 2016 at 7:00 p.m., at which time and place all interested members of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available on the borough website, www.hawthornenj.org, and at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

Lori DiBella, RMC
Borough Clerk