

ORDINANCE NO. 2023-05

AMENDING THE CODE OF THE BOROUGH OF MOUNT EPHRAIM TO REPEAL AND REPLACE CHAPTER 406, ENTITLED "VACANT PROPERTIES"

WHEREAS the Borough of Mount Ephraim (the "Borough") is a municipal corporation organized and operating under the laws of the State of New Jersey; and

WHEREAS New Jersey has recently adopted legislation concerning the institution and maintaining of Vacant and Abandoned Property ("VAP") registries; and

WHEREAS the Governing Body of the Borough has determined that it would be appropriate to amend the Borough's current VAP registry Ordinance to reflect the new State legislation; and

WHEREAS pursuant to N.J.S.A. 40:48-2, the Governing Body is authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety and welfare and as may be necessary to carry into effect the powers and duties conferred and imposed upon the Borough by law; and

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Mount Ephraim that the Code of the Borough of Mount Ephraim is hereby amended, revised and/or supplemented as follows:

SECTION 1. Chapter 406 of the Code of the Borough of Mount Ephraim is hereby repealed and replaced in its entirety to read as follows:

Chapter 406 – VACANT/ABANDONED PROPERTIES

§ 406-1 Purpose

This Chapter to governs the identification, registration, monitoring, and mitigation of properties that are or may become vacant and abandoned to the fullest extent permitted by P.L. 2021, c.444, in order to combat the immeasurable and deleterious effects of blight arising from residential and commercial properties that become vacant or abandoned, especially during the foreclosure process.

§ 406-2 Definitions

OPERATOR

Any person, persons, or entity who is not the owner, who has charge, care, and control of a premises or part thereof, with or without the knowledge, consent, or authority of the owner. "Operator" shall also include a creditor as defined below.

OWNER

Includes the title holder, any agent of the title holder having authority to act with respect to a vacant property, and foreclosing entity subject to the provisions of P.L. 2021, c.444, or any other entity determined by the borough to have authority to act with respect to the property.

CREDITOR

A State chartered bank, savings bank, savings and loan association or credit union, any person required to be licensed under the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 21 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89), and any entity, agent, or assignee acting on behalf of the creditor named in the debt obligation including, but not limited to, servicers, who has filed a complaint in the Superior Court seeking to foreclose upon a residential or commercial mortgage. A creditor shall not include the State, a political subdivision of the State, or a State, county, or local government entity, or their agent or assignee, such as the servicer.

VACANT AND ABANDONED PROPERTY

Any property not legally occupied by an Owner or tenant, which is in such condition that it cannot be legally reoccupied, because of the presences or finding of at least two of the following:

- 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, delivery persons, or government employees indicating that the property 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 due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
- l. an uncorrected violation of a Borough building, housing, or similar Code section during the preceding year, or an order by Borough authorities declaring the property to be unfit for human occupancy and to remain vacant and unoccupied;
- m. a 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 a mortgagor expressing the clear intent of all mortgagors to abandon the property; or
- o. any other reasonable indicia of abandonment.

§ 406-3 Registration of vacant properties not in foreclosure.

The owner and/or operator of any vacant property, as defined herein, that is not the subject of an ongoing foreclosure action 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 Borough Clerk on forms provided by the Borough for such purposes. Failure to receive notice by the Borough shall not constitute grounds for failure 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 e-mail address (if applicable) of a person 21 years or older, designated by the owner and/or operator or owner and/or operators 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 owners and/or operators in connection with the enforcement of any applicable code, and the name, street address, telephone number and e-mail address (if applicable) of the firm and the actual name(s) of the firm's individual principal(s) 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 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.
- c. The registration shall remain valid for one year from the date of registration, except for the initial registration time, which shall be prorated through December 31. The owner and/or operator shall be required to renew the registration annually as long as the building remains a vacant property.
- d. The annual renewal shall be completed by January 1 each year.
- e. The owner and/or operator shall notify the Borough Clerk within 30 calendar days of any change in the registration information by filing an amended registration statement on a form provided by the Borough Clerk 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 owners and/or operators of the building.

§ 406-4 Access to vacant properties.

The owner and/or operator of any vacant property registered under this chapter 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 and/or operator or the designated agent. Such inspections shall be carried out on weekdays during the hours of 8:00 a.m. and 4:00 p.m., or such other time as may be mutually agreed upon between the owner and/or operator and the Borough.

§ 406-5 Responsible owner or agent.

- a. An owner who meets the requirements of this chapter 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 provisions 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 property under the provisions of this chapter 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 of Mount Ephraim 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.

§ 406-6 Requirements of owners and operators of vacant properties.

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

- a. 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
- b. Post a sign affixed to the building indicating the name, address and telephone number of the owner and/or operator, the owner and/or operator's authorized agent for the purpose of service of process (if designated pursuant to § 406-5 above), and the person responsible for the day-to-day supervision and management of the building, if such person is different from the owner and/or operator 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 inches by 10 inches; and
- c. 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
- d. Ensure that the exterior grounds of the structure, including yards, fences, sidewalks, walkways, rights-of-way, alleys, retaining walls, attached or unattached accessory structures and driveways, are well maintained and free from trash, debris, loose litter and grass and weed growth; and
- e. 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 or is demolished or until repaired and/or rehabilitation of the building is complete.
- f. If the owner of a residential property vacates or abandons any property on which a foreclosure proceeding has been initiated, or if a residential property becomes vacant at any point subsequent to the operator's filing the summons and complaint in an action to foreclose on a mortgage against the subject property, but prior to vesting of title in the operator or any other third party, and the property is found to be a nuisance and/or in violation of any of the provisions of this chapter, the Code Enforcement Officer shall notify the operator, which shall have the responsibility to abate the nuisance and/or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by state law or this chapter. The Borough shall include a description of the conditions that gave rise to the violation with the notice of violation, and shall provide a period of not less than 30 days from the operator's receipt of the notice for the operator to remedy the violation. If the operator fails to remedy the violation within that time period, the Borough may impose penalties allowed for such violations pursuant to § 406-9 below.

§ 406-7

Establishment and administration of registry for properties in foreclosure.

- a. The Borough shall create and maintain a registry of all commercial and/or residential properties within the Borough for which a summons and complaint in an action to foreclose has been filed with the New Jersey Superior Court, pursuant to its authority granted by P.L. 2021, c.444. This registry will be formed and maintained to assist the Borough with regulating the maintenance, security, and upkeep of properties which may become vacant and abandoned during the foreclosure process, in order to prevent the deleterious effects of blight associated with vacant and abandoned properties that are not maintained.
- b. The Borough may, at its discretion, create, maintain, and administer this registry independently, retain the professional services of a third party pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1, *et seq.*, or participate in a Shared Services Agreement with other local units, Counties, and/or County Improvement Authorities for the creation, maintenance, and administration of the registry pursuant to the Uniform shared Services and Consolidation Act, N.J.S.A. 40A:65-1 *et seq.*
- c. Any third parties retained to create, maintain, and/or administer the registry shall have the authority, on behalf of the Borough, to
 1. Identify properties subject to the registration requirement;
 2. Maintain and update the registration list;
 3. Communicate with creditors and/or in-state representatives;
 4. Invoice and collect payment of fees;
 5. Monitor compliance; and
 6. Such other functions, within the scope of P.L. 2021, c.444, which may be deemed necessary to carry out its function on behalf of the Borough.
- d. Any third parties retained to create, maintain, and/or administer the registry shall be required to comply with the following reporting and payment requirements:
 1. Any and all amounts collected by the third party as part of its administration of the Borough's registry, including registration fees, interest, and penalties, shall be paid, in full, directly to the Borough, or Camden County, and/or the Camden County Improvement Authority, as applicable, not less than once per year, or as otherwise directed by the Borough's Zoning Officer or designee. No fees, payments, expenses, or other deductions shall be made from this payment; payment for any third party's services under this Article shall be made by the Borough, or as applicable, the County/County Improvement Authority, directly to the third party, under the terms and conditions outlined within the contract for professional services.
 2. Not less than once per year on the first business day of each calendar year, or as otherwise may be requested by the Tax Collector, any third party administering the Borough's registry shall file with Tax Collector a certification identifying:
 - i. The address, block, lot, and contact information of any property for which registration fees under this Article are due and owing at the time of the certification;
 - ii. The amount of the registration fees, and separately, an interest, fines, and other penalties due and owing at the time of the certification; and
 - iii. The date on which the property became eligible for inclusion on the Borough's registry.

§ 406-8

Registration, notice, and other creditor requirements.

- a. Within thirty (30) days of the effective date of this Ordinance, any creditor who has initiated a summons and complaint with the New Jersey Superior Court in an action to foreclose on a commercial and/or residential mortgage for a property located within the Borough: (i) prior to the effective date of this Ordinance, and (ii) which is pending as of the effective date of this Ordinance, shall provide notice in accordance with subsection (b) of this Section 406-8
- b. Within ten (10) days of filing a summons and complaint with the New Jersey Superior Court in an action to foreclose on a commercial and/or residential mortgage for a property located within the Borough, the creditor shall notify the Borough Clerk, or his/her designee, of the action. Such notice shall include:
 1. The address, block and lot of the subject property;
 2. The date the summons and complaint in an action to foreclose on a mortgage was filed against the subject property, the court in which it was filed, and the docket number of the filing;
 3. Whether the property is vacant and abandoned in accordance with the definition in this Chapter;
 4. The full name, address, and telephone number for the representative of the creditor who is responsible for receiving notice of complaints of property maintenance code violations;
 5. The full name, address, and telephone number of any persons or entity retained by the creditor or a representative of the creditor to be responsible for any care, maintenance, security, or upkeep of the property; and
 6. If the creditor is out-of-State, the full name, address, and telephone number of an in-State representative or agent who shall be responsible for any care, maintenance, security, or upkeep of the property, and for receiving notice complaints of property maintenance and code violations.
 7. The notice requirements herein represent a continuing obligation throughout the pendency of the foreclosure action. After initial notice to the Borough, creditors subject to the notice requirement shall update the Borough's property registration program within ten (10) days of any change in the information contained in the original or any subsequent notices.
- c. Creditors of any commercial and/or residential mortgage required to notify the Borough pursuant to this Section shall:
 1. Register the property with the Borough's property registration program as a property in foreclosure within thirty (30) days of notifying the Borough;
 2. Be subject to the registration fee, notice requirements, and penalties for non-compliance established within this Chapter;
 3. Update the property registration within ten (10) days of any change in the information contained in the original notice to the Borough;
 4. If an out-of-State creditor, appoint an in-State representative or agent to act for the foreclosing creditor, whose contact information shall be contained within the initial notice to the Borough;
 5. Within ten (10) days of the property becoming vacant and abandoned at any time during the pendency of the foreclosure action, the creditor shall:
 - i. Assume responsibility for the care, maintenance, upkeep, and security of the exterior of the property;
 - ii. Secure the property against unauthorized entry;
 - iii. Post a sign on the inside of the property, visible to the public, containing the name, address, and telephone number of the creditor, or an out-of-

- State creditor's in-State representative or agent, for the purpose of receiving service of process;
- iv. Acquire and maintain a vacancy insurance policy which covers any damage to any person or property caused by any physical condition of the property while registered with the Borough's property registration program;
 - v. Provide proof, within ten (10) days of receiving a request by the Borough or its designee, that the above conditions have been satisfied;
 - vi. Cure any violations of the above requirements within thirty (30) days of receiving a notice of violation, or if deemed to present an imminent threat to public health and safety, within ten (10) days of receiving such notice.
6. Update the property registration within ten (10) days of the creditor becoming aware that the property is deemed vacant and abandoned as defined herein.
- d. If at any time the creditor is deemed to be in violation of the above requirements, and/or if the property is deemed to be in violation of any other applicable local or state maintenance, health, or safety codes, the Code Official or his/her designee shall notify the creditor using the contact information provided in the property registry established by this Chapter

§ 406-9 Violations and penalties.

- a. Except as otherwise provided in § 406-7 and § 406-8 above, any owner, operator or occupant who or which shall violate any of the provisions of this chapter shall, upon conviction in the Mount Ephraim Municipal Court or any such other court having jurisdiction, be subject to the penalty provisions contained in Chapter 305, Penalties. Each day that a violation occurs shall be deemed a separate offense and subject to the penalty provisions of this chapter.
- b. For purposes of this chapter, 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 chapter
- c. An out-of-state creditor subject to the notice and registration requirements of this Chapter, found to be in violation of the requirement to appoint an in-State representative or agent, shall be subject to a fine of two thousand five hundred dollars (\$2,500.00) for each day of the violation. The violation shall be deemed to commence on the day after the creditor's initial ten (10) or thirty (30) day requirement to notify the Borough of applicable foreclosure actions.
- d. A creditor subject to the notice and registration requirements of this Chapter found to be in violation of any other Section of this Chapter shall be subject to a fine of one thousand five hundred dollars (\$1,500.00) for each day of the violation. The violation shall be deemed to commence on the 31st day following the creditor's receipt of a notice of violation, or if deemed to present an imminent threat to public health and safety, on the 11th day following the creditor's receipt of such notice.
- e. If the Borough expends public funds in order to abate a nuisance or correct a violation on a commercial property in situations in which the creditor was given notice pursuant to this Chapter, but failed to abate the nuisance or correct the violation as directed, the Borough shall have the same recourse against the creditor as it would have against

the Owner of the property, including but not limited to the recourse provided under N.J.S.A. 55:19-100, *et seq.*

§ 406-10 Administration.

The Borough's Code Enforcement Officer or his/her designee shall serve as the municipal official responsible for notifying creditors, establishing and maintaining the registry, determining eligibility for designation as a vacant and abandoned property under this Article, and for imposing fees, penalties, and/or violations. The responsibilities herein may be designated to a third party, pursuant to the terms and conditions of a contract for professional services consistent with P.L. 2021, c.444

§ 406-11 No restriction of other remedies.

Nothing in this chapter is intended nor shall be read to conflict or prevent the Borough from taking action against buildings found to be unfit for human habitation or unsafe structures as provided in applicable provisions of the Code of the Borough of Mount Ephraim. Further, any action taken under any such code provision other than the demolition of a structure shall relieve an owner from its obligation under this chapter.

§ 406-12 Use of funds collected.

No less than twenty percent (20%) any money collected pursuant to this Chapter shall be utilized by the Borough for municipal code enforcement purposes. Any additional funds collected as vacant property registration fees in excess of the funds necessary to operate and enforce the provisions of this chapter shall be set aside in a dedicated fund for the purpose of property rehabilitation within the Borough of Mount Ephraim at the discretion of the governing body.

SECTION 2. Chapter 165, Section § 165-21 "Vacant Property", is hereby amended, supplemented and revised as follows:

§ 165-21 Vacant property in foreclosure.

Fees for registration of vacant and abandoned properties that are the subject of an ongoing foreclosure action. (§ 406-7 and § 406-8)

- a. All fees, penalties, and/or fines established within Chapter 406 and assessable pursuant to the Borough's authority outlined within P.L. 2021, c.444 shall be deemed a municipal charge in accordance with N.J.S.A. 54:5-1, *et seq.*
- b. Creditors required to notify the Borough and register a property as one in foreclosure shall be required to pay an annual registration fee of five hundred dollars (\$500.00) per property, due at the time of registration.
- c. If a property registered with the Borough's registration program pursuant to § 406-7 and § 406-8 as a property in foreclosure is determined to be vacant and abandoned at the time of registration, or becomes vacant and abandoned at any time during the pendency of the foreclosure proceeding, the creditor shall pay an additional annual registration fee of two thousand dollars (\$2,000) per property, due at the time the determination that the property is vacant and abandoned is made.

SECTION 3. Except as set forth in Sections 1 and 2 above, the balance of the Code of the Borough of Mount Ephraim shall not be affected by this Ordinance.

SECTION 4. All Ordinances contrary to the provisions of this Ordinance are hereby repealed to the extent that they are inconsistent herewith.

SECTION 5. If the provisions of any section, subsection, paragraph, subdivision, or clause of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.

SECTION 6. This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

BOROUGH OF MOUNT EPHRAIM

Date of Introduction: March 2, 2023

Date of Adoption: April 6, 2023

Approved: *Michael Tovinsky*
Mayor Michael Tovinsky

Attest: *Terry Shannon*
Terry Shannon, Clerk/RMC