11.12 Vacant Structure Code

11.12.010 Adoption
11.12.020 Purpose
11.12.030 Definitions
11.12.040 Applicability
11.12.050 Registration Generally
11.12.060 Right Of Appeal
11.12.070 Amending Information
11.12.080 Non-Payment Of Fees/liens
11.12.090 Relation To Other Codes And Laws
11.12.100 Severability
11.12.110 Alternative Method And Process To Enforce Registration

Cross References - Unsafe structures - see BLDG. & HSG. OHMC 11.04; Vacant rental or commercial property - see BLDG. & HSG. OMC 11.16.

11.12.010 Adoption

There is hereby adopted a Vacant Structure Code for the City of Oak Hill.

(Ord. 5-9-11)

11.12.020 Purpose

The City has determined that vacant buildings may present a fire hazard, may provide temporary occupancy by transients (including drug users and traffickers), may detract from private and/or public efforts to rehabilitate or maintain surrounding buildings, and that the health, safety and welfare of the public is served by the registration of such vacant buildings.

Owners of vacant buildings shall register such vacant buildings with the City, make payment of a fee for the registration thereof, and otherwise conform to these vacant building regulations.

(Ord. 5-9-11)

11.12.030 Definitions

A. For purposes of this chapter, "vacant building" means a building or other structure that is unoccupied, or unsecured and occupied by one or more unauthorized persons, for an consecutive period of one hundred eighty (180) days or more. Provided, that a new building under construction is not deemed a vacant building; provided, however, that the City Council may, on a case by case basis, upon request by the property owner, exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determined period of time. (Ord. 5-9-11)

B. "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 sewer services; a valid city business license; 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 bonafide pre-rental inspection.

C. "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, dwells, or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner- occupant(s), or tenant(s) on a permanent, non-transient basis. A building or structure shall be deemed vacant and subject to the registration and possible penalty provisions provided herein if there is not proof of continual utility service evidencing actual use of electric, gas (i.e., applicable heating sources), water service etc. Continued is meant to be without more than one hundred eighty (180) day interruption in any given three hundred sixty (360) day period. In order for such continual utility service to be considered as being actually in use as described in this section, it must be more than merely registered to the owner for purposes of billing and must be utilized. The person or entity asserting that there has been continued utility service has the burden to produce actually bills evidencing utility service for the relevant period.

(Ord. 2-13-12)

HISTORY
Amended by Ord. 2019005 on 2/11/2019

11.12.040 Applicability

The requirements of this section shall be applicable to each owner of any building that is found to be vacant pursuant to the language contained herein. 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 and the names and addresses of all owners, as hereinafter described. The registration fee(s) as required by this section shall be billed by the City and shall be paid by the last day of the month when the property has been registered. For purposes of this section, the following shall also be applicable:

A. If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the Secretary of State;

B. If an estate, the name and business address of the executor of the estate;

C. If a trust, the name and address of all trustees, grantors, and beneficiaries;

D. If a partnership, the names and residence addresses of all partners with an interest of ten percent (10%) or greater;

E. If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent (10%) or greater;

F. If an individual person, the name and residence address of that individual person.

(Ord. 5-9-11)

11.12.050 Registration Generally

A. At the time of adoption of this chapter, all owners of realty within the City that contain a vacant structure, as defined in OHMC 11.12.030, shall register the same with the office of the Building Inspection of the City. For those structures that qualify as a vacant structure and after the adoption of this chapter, the owner thereof shall be required to register the structure with the Building Inspection Office within 30 days after the structure is found to meet the definition of a vacant structure. The registration form shall require information from the registrant deemed

necessary by the City Manager, Building Inspector, Fire Chief, City Engineer and Police Chief of the City, so as to ensure that the purpose of this chapter is met.

B. 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, 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, and shall be required whenever any building has remained vacant for one hundred eighty (180) 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 for compliance with any other Building Code or Housing Code requirement. Each vacant structure constitutes a separate fee. The owner of the vacant property as of the last day of the month when the property has been registered of each calendar year shall be responsible for the payment of the non-refundable registration fee. Said fee shall be billed by the City, 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. $200.00 for properties that are vacant for at least one year but less than two years;
3. $400.00 for properties that are vacant for at least two years but less than three years;
4. $600.00 for properties that are vacant for at least three years but less than four years;
5. $800.00 for properties that are vacant for at least four years but less than five years; and
6. $1,600.00 for properties that are vacant for at least five years, plus an additional $300.00 for each year in excess of five years.

C. The fee paid may be refunded prorated only for the current year during the 6 months following the registration anniversary if all of the following apply.

1. The structure is demolished or caused or be demolished by the owner of the structure to include debris removal, utility capping and landscaping.
2. The owner obtains all permits and bonds required by the City for demolition.
3. Demolition must be completed and bonds released during the first six months of the current registration year.
4. The owner has made application for a refund.

D. The registration process shall not start anew with the sale of the property except the City Manager may provide a one-time waiver for up to 12 months following the sale of vacant property. At the expiration of the waiver the fee due will be the amount owed by the previous owner and increase according to the above schedule. In cases where the City sells vacant property the registration process and fees will start anew.

(Ord. 4-14-14)

HISTORY
Amended by Ord. 2019005 on 2/11/2019
Amended by Ord. 2019004 on 6/10/2019

11.12.060 Right Of Appeal

A. Appeal Rights. The owner shall have the right to appeal the imposition of the registration fees to

the City Manager, upon filing an application in writing to the Department of Licenses 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 in this chapter specifically.

B. One-Time Waiver of Registration Fee. A one-time waiver of the registration fee, or an extension of a waiver for up to 90 days from the date of the current billing statement, may be granted by the City Manager or his designee upon application of the owner and upon review and advice of the Building Code Licensure, Public Health and Safety Officials and City Engineer, if the owner:

1. Demonstrates with satisfactory proof to the City Manager or his designee that he/she is in the process of demolition, rehabilitation or other substantial repair of the vacant building; and
2. Objectively demonstrates to the City Manager or his designee a reasonable anticipated length of time for the demolition, rehabilitation or other substantial repair of the vacant building;
3. Provides satisfactory proof to the City Manager or his designee that he/she was actively attempting to sell or lease the property during the vacancy period; or
4. Provides satisfactory proof to the City Manager, to be evaluated on a case- by-case basis, that the vacancy is temporary and may be due to illness of the owner, active military service, or some other reasonable explanation believed to be short term in nature and documentable as necessary.

C. Within 30 days, or as soon thereafter as possible, after the waiver application is received by the City Manager, or his designee shall grant or deny the waiver, or request for extension, in writing, and dispatch the written decision by mail to the owner. If the owner properly submitted an application for a one-time waiver or request for extension to the City Manager or his designee, and the City Manager or his designee rendered a decision which the owner seeks to appeal to the City Council, the owner must file an application in writing no later than 30 calendar days from the date of the City Manager or his designee's decision. City Council shall either grant or deny the appeal. Thereafter the decision of City Council is final unless within thirty (30) days of such decision the owner appeals for injunctive relief to the Circuit Court of Fayette County.

D. A property owner may challenge any determination made pursuant to this chapter by requesting a hearing before the City Council within 30 days of the date of the determination being challenged. The property owner may appeal the final decision of City Council by filing an appeal to the Circuit Court of Fayette County, within 30 days to the date of said final decision.

(Ord. 5-9-11; 11-14-11)

11.12.070 Amending Information

A. Duty to Amend Registration Statement. If the status of the registration information changes during the course of any calendar year, to include change of ownership, it is the responsibility of the owner, responsible party or agent for the same to contact the Department of Licenses and Inspections within 30 days of the occurrence of such change and advise the Department in writing of those changes.

B. Exceptions. This section shall not apply to any building owned by the United States, the State, the City, or any of their respective agencies or political subdivisions.

C. Violations and Penalties for Failure to Register. 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 upon adoption of this section or to pay any fees required to be paid pursuant to the provisions of this

section, within thirty days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of one hundred dollars ($100.00) is imposed, it shall not be subject to suspension or reduction for any reason.

(Ord. 5-9-11; 11-14-11)

11.12.080 Non-Payment Of Fees/liens

A. 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 OHMC 11.12.060 Part B,4, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the City and the City may commence a civil action to collect such unpaid debt.

B. "Lien" or "liens" as used in this section shall arise whenever the fees and charges as described in this section are levied or imposed. Before any lien is filed, notice shall be given to the property owner or owner's agent, by certified mail, return receipt requested, that the Municipality will file the lien unless the delinquent fees are paid by a date stated in the notice, which must be no less than thirty days from the date the notice is received by the owner or the owner's agent, which shall be the date of delivery shown on the signed certified mail return receipt card. When service cannot be obtained by certified mail, notice may be given by any other method by which process may be served in civil actions in circuit court.

C. If an owner fails to pay the registration fee as assessed and the City begins the collection action to enforce its lien, then the Code Enforcement Officer shall post the written notice on the property and send the written notice to the owner(s) by certified and regular mail.

D. The City may take action to sell the subject property by means of forfeiture and the court ordered enforcement process to collect the debt owed the City. Should the City take the steps necessary to sell the subject property, the City shall do so, subject to all liens and real and personal property taxes that are due. Purchasers of the subject property shall be similarly responsible for registration pursuant to this section in the same manner as the prior owner and must begin the registration process anew if said property remains vacant.

(Ord. 5-9-11)

11.12.090 Relation To Other Codes And Laws

It is to be understood that the intent and purpose of this chapter are separate and distinct from other parts and sections of the Codified Ordinances of the City of Oak Hill and the general laws of the state of West Virginia which may also be applicable. 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 City of Oak Hill Municipal Code.

(Ord. 5-9-11)

11.12.100 Severability

The provisions of this OHMC 11.12 are severable. If any part of this OHMC 11.12 is held to be invalid by a court of competent jurisdiction, the remaining provisions of OHMC 11.12 shall remain in full force and effect.

(Ord. 5-9-11)

11.12.110 Alternative Method And Process To Enforce Registration

A. Purpose and Applicability.

1. The purpose of this section is to provide an alternative method and process to enforce the registration of vacant structures within the City when the property owner cannot be verified or the owner is uncooperative with the vacant structure ordinance.
2. This section shall be in addition to those methods and processes otherwise contained in the Municipal Code of the City of Oak Hill and shall be applied at the discretion of the enforcement official enforcing the provisions of this section.

B. Timeframe.

1. The timeframe referenced throughout this section is a set amount of time which must lapse prior to further action being pursued against the property and/or owner(s).
2. The set amount of time is to be two calendar weeks, beginning on the date of the most recent action against the property and/or owner(s).

C. Process to Determine "Absentee" Ownership. The following protocol will be followed by the City to determine the ownership of a property as "absentee." Once "absentee" ownership has been established, the City can therefore enact registration of the property under the Vacant Structure Registration program, levying and applicable fines and fees.

1. The property must be identified as potentially vacant by the City. Property ownership information must be obtained by the City through the Fayette County Assessor's Office.
2. First attempt at contact: A letter along with a Vacant Structure Registration form is mailed to the owner's address on file at the Fayette County Assessor's Office.
3. Receipt of response from owner(s): The owner receives the documentation and responds either by mailing back the completed Vacant Structure Registration form or notifying the City that the structure is not vacant or is being used in a manner that complies with all City regulations without physical occupancy.
4. Final (second) attempt at contact: If the timeframe has lapsed after the first attempt at contact, a "final notice" letter along with the Vacant Structure Registration form is mailed to the owner, emphasizing failure to respond to in the stated timeframe will result in the ownership of the property being deemed "absentee" and the property will be registered as "vacant with absentee ownership" by the City.
5. Class II legal advertisement and physical notice property: If the timeframe has lapsed after the final notice attempt, a Class II legal advertisement will be submitted and a physical notice will be posted on the property. The advertisement and notice will state the property is being registered as "vacant with absentee ownership" by the City unless the owner responds within two weeks from the beginning of the advertisement.
6. "Absentee Ownership" established: If no response has been received from the property owner(s) two weeks after the submission of the Class II legal advertisement, the property is officially classified by the City as "Vacant with absentee ownership."
    a. The property owner is not exonerated from possible penalties once the property is classified as "vacant with absentee ownership".

D. Registration of Property as "Vacant with Absentee Ownership". Once classification of the property as "vacant with absentee ownership" is officially established, the property is registered

under the Vacant Structure Registration program and its status reviewed one year from the date of registration, or when the property is no longer vacant, whichever comes first.

1. One year from date of registration: After one year has lapsed, fees are assessed against the property based on the standard renewal fee schedule.
2. Structure no longer vacant: If the structure becomes occupied, any and all fees and fines assessed against the property must be paid in full prior to the property being classified as "not vacant" by the City.

(Passed 11-9-15)