

## PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Smithtown, Suffolk County, State of New York met via Zoom video conferencing on Thursday, March 25, 2021 at 2:00 p.m. time then in effect duly adopted proposed amendments to Chapter 221 of the Code of the Town of Smithtown entitled "Property Maintenance" for which a public hearing was held on Tuesday, March 9, 2021 and pursuant to a SEQRA letter dated March 22, 2021, and the recommendation of the Town Attorney:

### **Proposed Local Law # 1-2021 Chapter 221. Property Maintenance**

Additions indicated by underlines.

Deletions indicated by strikeouts.

#### **Article II Registration of Vacant and Abandoned, Foreclosing, or Foreclosed Property**

##### **§221-7 Legislative Intent; definitions.**

A. It is the purpose and intent of the Town Board to establish a process to address the deterioration, crime, and decline in value of Town neighborhoods caused by vacant and abandoned property with foreclosing or foreclosed mortgages located within the Town, and to identify, regulate, limit and reduce the number of these properties located within the Town. Vacant structures or structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintained, which contribute to blight, declined property values, and have a negative impact on social perception of the residential areas where they are located. It is the Town Board's further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are vacant and abandoned, in foreclosure, or foreclosed, and to provide a mechanism to avert foreclosure actions through timely intervention, education, or counseling of property owners.

B. For the purposes of this chapter, the following terms shall be given the meanings as set forth herein:

**Default** shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

**Enforcement Officer** shall mean any law enforcement officer, ordinance inspector, applicant and complaint investigator, building official, zoning inspector, code enforcement officer, fire marshal, building inspector, or other person authorized by the Town to enforce the applicable code(s).

**Evidence of Vacancy** shall include, but not be limited to, the following conditions: (i) overgrown or dead vegetation; (ii) accumulation of newspapers, circulars, flyers, or mail;

(iii) past due utility notices, disconnected utilities, or utilities not in use; (iv) accumulation of trash, refuse, or other debris; (v) absence of window coverings such as curtains, blinds, or shutters; (vi) one or more boarded, missing, or broken windows; (vii) the property is open to casual entry or trespass; or (viii) the property has a building or structure that is, or appears, structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons. Residential real property will not be deemed vacant and abandoned if, on the property: (i) there is an unoccupied building that is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion; (ii) there is a building occupied on a seasonal basis, but otherwise secure; (iii) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute of which the servicer has actual notice; (iv) there is a building damaged by a natural disaster and one or more owner intends to repair and reoccupy the property; or (v) there is a building occupied by the mortgagor, a relative of the mortgagor, or a tenant lawfully in possession.

**Foreclosure or Foreclosure Action** shall mean the legal process by which a Mortgagee, or other lien holder, terminates or attempts to terminate a property owner's equitable right of redemption to obtain legal and equitable title to the Real Property pledged as security for a debt or the Real Property subject to the lien. The legal process is not concluded until the property obtained by the Mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

**Mortgagee** shall mean the creditor, including but not limited to, trustees; mortgage servicing companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement; or any other person or entity with the legal right to foreclose on the Real Property, excluding governmental entities.

**Property Manager** shall mean any party designated by the Mortgagee as responsible for inspecting, maintaining and securing the property as required in this Chapter.

**Real Property** shall mean any residential or commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the Town limits.

**Registrable Property** shall mean:

- (a) Any Real Property located in the Town that is vacant and abandoned and encumbered by a mortgage subject to an ongoing Foreclosure Action by the Mortgagee or Trustee, has been the subject of a Foreclosure Action by a Mortgagee or Trustee and a Judgment has been entered, or has been the subject of a Foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the Foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a "foreclosure" property as "registrable" shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm's length transaction or the Foreclosure Action has been dismissed.

Registry shall mean a web-based electronic database of searchable Real Property records, used by the Town to allow Mortgagees the opportunity to register properties and pay applicable fees as required in this Chapter.

Semi-Annual Registration shall mean six (6) months from the date of the first action that requires registration, as determined by the Town, or its designee, and every subsequent six (6) months. The date of the initial registration may be different than the date of the first action that required registration.

Utilities and Services shall mean any utility and/or service that is essential for a building to be habitable and/or perform a service necessary to comply with all Town codes. This includes, but is not limited to, electrical, gas, water, sewer, lawn maintenance, pool maintenance, and snow removal.

Vacant and Abandoned Residential Real Property shall be defined as residential real property that has been inspected on at least three consecutive occasions, with each inspection conducted twenty-five to thirty-five days apart, and at different times of the day, and at each inspection (i) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and (ii) the residential real property was not being maintained in a manner consistent with the standards set forth in this Chapter 221. Residential real property will also be deemed vacant and abandoned if: (i) A court or appropriate state or local governmental entity has formally determined, following due notice to the borrower or owner at the property address and any other known addresses, that such residential property is vacant and abandoned; or (ii) each borrower and owner has separately issued a sworn statement, expressing his or her intent to vacate and abandon the property, and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.

#### **§221-8. Applicability and Jurisdiction.**

This Chapter applies to Vacant, Abandoned, Foreclosing, or Foreclosed property within the Town.

#### **§221-9 Establishment of a Registry.**

The Town, or its designee, shall establish a registry cataloging each Registrable Property within the Town, containing the information required by this Chapter.

#### **§221-10 Inspection and Registration of Real Property.**

- A. Any Mortgagee who holds a mortgage on Real Property located within the Town shall perform an exterior inspection of the property within ninety days of a borrower's delinquency to determine occupancy. Thereafter, throughout the delinquency of the loan, the Mortgagee shall conduct an exterior inspection of the property every twenty-five to thirty-five days, at different times of the day.

B. If the Mortgagee determines that the property has become vacant and abandoned, the Mortgagee shall, within seven (7) days, post a notice containing the Mortgagee or its designee's contact information, on an easily accessible part of the property that would be reasonably visible to the borrower, property owner, or occupant, and monitor the property for any change in occupancy or contact with the borrower, property owner, or occupant, and monitor to ensure that the notice remains posted so long as the duty to maintain applies.

C. If the posted notice is not responded to or persists for seven (7) consecutive calendar days without contact with the borrower, owner, or occupant, indicating that the property is not vacant or abandoned, the Mortgagee shall register the Real Property with the Town Registry, and designate in writing a Property Manager to inspect, maintain, and secure the Real Property. A separate registration is required for each property that becomes Vacant and Abandoned.

D. When a property subject to this Chapter becomes Vacant and Abandoned, it shall be posted with the name and twenty-four (24) hour contact telephone number of the Property Manager. The Property Manager shall be available to be contacted by the Town Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays excepted. The sign shall be placed in a window facing the street and shall be visible from the street. The posting shall be no less than eighteen (18) inches by twenty-four (24) inches and shall be of a font that is legible from a distance of forty-five (45) feet. The posting shall contain the following language with supporting information:

THIS PROPERTY IS MANAGED BY \_\_\_\_\_  
AND IS INSPECTED ON A REGULAR BASIS. THE PROPERTY MANAGER CAN  
BE CONTACTED BY TELEPHONE AT \_\_\_\_\_  
OR \_\_\_\_\_ BY \_\_\_\_\_ EMAIL \_\_\_\_\_ AT \_\_\_\_\_  
\_\_\_\_\_.

E. The posting required in subsection (D) above shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so that it is visible from the street or, if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visible from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.

G. Initial registration pursuant to this section shall contain at a minimum the name of the Mortgagee, the mailing address of the Mortgagee, e-mail address, and telephone number.

H. At the time of initial registration each registrant shall pay a non-refundable Semi-Annual Registration fee of five hundred dollars (\$500.00) for each property. Subsequent non-refundable Semi-Annual renewal registrations of properties and fees in the amount of five hundred dollars (\$500.00) are due within ten (10) days of the expiration of the previous

registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Defaulted properties, (3) post-closing counseling and Foreclosure intervention limited to owner-occupied persons in Default, which may not include cash and mortgage modification assistance, and (4) for any related purposes as may be adopted in the policy set forth in this Chapter. Said fees shall be deposited to a special account in the Town's Department dedicated to the cost of implementation and enforcement of this Ordinance, and fulfilling the purpose and intent of this Chapter. None of the funds provided for in this section shall be utilized for the legal defense of Foreclosure Actions.

- I. If the mortgage and/or servicing on a Registrable Property is sold or transferred, the new Mortgagee is subject to all the terms of this Chapter. Within ten (10) days of the transfer, the new Mortgagee shall register the property or update the existing registration. The previous Mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Mortgagee's involvement with the Registrable Property.
- J. If the Mortgagee sells or transfers the Registrable Property in a non-arm's length transaction to a related entity or person, the transferee is subject to all the terms of this Chapter. Within ten (10) days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the Mortgagee was at the time registration was required, including, but not limited to, unregistered periods during the Foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous Mortgagee will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Mortgagee's involvement with the Foreclosed Property.
- K. If the Vacant and Abandoned Property is not registered, or the registration fee is not paid within thirty (30) days of when the registration or renewal is required pursuant to this section, a late fee equivalent to ten percent (10%) of the Semi-Annual Registration fee shall be charged for every thirty (30) day period, or portion thereof, the property is not registered and shall be due and payable with the registration.
- L. This section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the Mortgagee as well as any properties transferred to the Mortgagee under a deed in lieu of foreclosure or by any other legal means.
- M. Properties subject to this section shall remain subject to the Semi-Annual Registration requirement, and the inspection, security, and maintenance standards of this section as long as the property remains a Registrable Property.
- N. Failure of the Mortgagee to properly register or to modify the registration to reflect a change of circumstances as required by this ordinance is a violation of this Chapter and shall be subject to enforcement by any of the enforcement means available to the Town.

- O. If any property is in violation of this Chapter the Town may take the necessary action to ensure compliance with and/or place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to bring the property into compliance.

**§221-12 Maintenance Requirements.**

- A. Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except those required by federal, state, or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material, or any other items that give the appearance that the property is abandoned.
- B. Registrable Property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- C. Front, side, and rear yards, including landscaping, of Registrable Property shall be maintained in accordance with the applicable code(s).
- D. Registrable yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark, or artificial turf/sod. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt, or similar material.
- E. Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover, and/or landscape and removal of all trimmings.
- F. Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s).
- G. Failure of the Mortgagee and transferees to properly maintain the property as required by this Chapter may result in a violation of the applicable code(s) and issuance of a citation or notice of violation in accordance with the applicable code of the Town.
- H. In addition to the above, the property is required to be maintained in accordance with all applicable code(s) of the Town and all requirements of Real Property Actions & Proceedings Law §1308.

**§221-13 Security requirements.**

- A. Properties subject to these sections shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- B. A “secure manner” shall include, but not be limited to, the following:

(i) Windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be closed and locked;

(ii) Broken windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property or structure must be secured, boarded up, or repaired.

(iii) Any part of the property that may be deemed an attractive nuisance, including, but not limited to, water features, refrigerator or freezer units, outbuildings, wells, or septic tanks must be secured.

C. If a property is Registrable, and the property has become blighted, a Property Manager shall be designated by the Mortgagee to perform the work necessary to bring the property into compliance with the applicable code(s), and the Property Manager must perform regular inspections to verify compliance with the requirements of this Chapter, and any other applicable laws.

D. In addition to the above, the property is required to be secured in accordance with the applicable code(s) of the Town and all requirements of Real Property Actions & Proceedings Law §1308.

E. Failure of the Mortgagee of record to properly inspect and secure a property subject to this Chapter, and post and maintain the signage noted in this section, is a violation and shall be subject to enforcement by any of the enforcement means available to the Town. The Town may take the necessary action to ensure compliance with this section, and recover costs and expenses in support thereof.

#### **§221-14 Provisions supplemental.**

The provisions of this Chapter are cumulative with and in addition to other available remedies. Nothing contained in this Chapter shall prohibit the Town from collecting on fees, fines, and penalties in any lawful manner; or enforcing its codes by any other means, including, but not limited to, injunction, abatement, or as otherwise provided by law or ordinance.

#### **§221-15 Public nuisance.**

All Registrable Property is at risk of being a public nuisance and, if blighted, can constitute a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare, and safety of the residents of the Town.

#### **§221-16 Additional authority.**

A. If the Enforcement Officer has reason to believe that a property subject to the provisions of this Chapter is posing a serious threat to the public health, safety, and welfare, the Enforcement Officer may temporarily secure the property at the expense of the Mortgagee, and may bring the violations before the Town Board as soon as possible to

address the conditions of the property. Nothing herein shall limit the Town from abating any nuisance or unsafe condition by any other legal means available to it.

- B. The Town Board shall have the authority to require the Mortgagee affected by this section to implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard, or other measures as may be reasonably required to help prevent further decline of the property.
- C. If there is a finding that the condition of the property is posing a serious threat to the public health, safety, and welfare, then Town Board may direct the Town to abate the violations and charge the Mortgagee with the cost of the abatement.
- D. If the Mortgagee does not reimburse the Town for the cost of temporarily securing the property, or of any abatement directed by the Town Board, within thirty (30) days of the Town sending the Mortgagee the invoice then the Town may lien the property with such cost, along with an administrative fee, as determined in the Town's fee ordinance, to recover the administrative personnel services. In addition to filing a lien the Town may pursue financial penalties against the Mortgagee.
- E. The Town may contract with an entity to implement this Chapter, and, if so, any reference to the Enforcement Officer herein shall include the entity the Town contracts with for that purpose.

#### **§221-17 Opposing, Obstructing Enforcement Officer; Penalty.**

Whoever opposes, obstructs, or resists any Enforcement Officer or any person authorized by the enforcement office in the discharge of duties as provided in this chapter shall be punishable as provided in the applicable code(s) or a court of competent jurisdiction.

#### **§221-18 Immunity of Enforcement Officer.**

Any Enforcement Officer or any person authorized by the Town to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon Real Property while in the discharge of duties imposed by this Chapter.

#### **§221-19 Penalties.**

Unless otherwise provided for in this Chapter, a violation of this Chapter is declared unlawful and shall be punishable by a fine of up to \$5,000 per day for each day that the violation continues.

#### **§221-20 Amendments.**

Registration fees and penalties outlined in this Article may be modified by resolution, administrative order, or an amendment to this Article, passed and adopted by the Town Board.



**§221-21 Severability.**

It is hereby declared to be the intention of the Town that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

**§221-22 Repealer.**

All ordinances or parts of ordinances in conflict herewith, are hereby repealed and replaced.

**§221-23 Codification.**

It is the intention of the Town Board that the provisions of this Ordinance shall become and be made a part of the Town Code of Ordinances; and that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “chapter,” or such other appropriate word or phrase in order to accomplish such intentions.

**§221-24 Effective Date.**

This ordinance shall become effective immediately upon adoption.

**Article III IV Shopping Carts**

**§221-7-25 Identification tag required.**

**§221-8-26 Abandonment.**

**§221-9-27 Collection by Town employees.**

**§221-10-28 Redemption.**

**Article IV V Penalties and Enforcement.**

**§221-11-29 Penalties for offenses.**

**§221-12-30 Administrative remedy.**

**§221-13-31 Additional remedies.**

**§221-14-32 Enforcement.**

Dated: March 25, 2021

BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF SMITHTOWN  
VINCENT PULEO  
TOWN CLERK