

ORDINANCE NO. 110-2018 (HT), *Second Reading*

By Council Member Dunbar

An Ordinance amending Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights to enact a provision requiring a cash bond upon foreclosure of vacant commercial properties.

WHEREAS, the City of Cleveland Heights wishes to proactively address potential blight resulting from foreclosures on vacant commercial real property within the City; and

WHEREAS, the posting of a cash bond will encourage responsible behavior on the part of foreclosing property owners and will provide further incentive for them to consider every option available to keep a property occupied; and

WHEREAS, in the event that keeping a property occupied is not achievable, the bond requirement will encourage the owners to do everything in their power to ensure the property remains well-maintained and code compliant; and

WHEREAS, if a foreclosing property owner does not fulfill responsibility to ensure property maintenance and code compliance, the posting of a cash bond will mitigate the public costs of maintaining distressed properties.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1369.17(a) shall be, and is hereby amended to read as follows:

(a) The owner(s) of any business structure, including but not limited to commercial, industrial and institutional structures, that has become vacant as defined in Section 1361.18 subsection (e) of this Section 1369.17, shall within sixty (60) days after the structure becomes vacant register with the Commissioner of Buildings or designee and designate an authorized agent located in Cuyahoga County for each vacant structure. The registration shall remain valid until December 31 of the year of the date of issuance for one (1) year from the date of registration. The owner shall be required to annually renew the registration by January 1 of each subsequent year for as long as the structure remains vacant and shall pay an annual registration fee of one hundred dollars (\$100.00) for each registered structure. The annual registration fee shall not be prorated. The owner shall notify the Commissioner of Buildings or designee within twenty (20) days of any change in the registration information by

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filing an amended registration statement on a form provided by the Commissioner of Buildings or **designee** for such purposes. 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 City against the owner or owners of the structure. The failure of the owner of the vacant structure to obtain a deed for the property or to file the deed with the County Fiscal Office shall not excuse the owner from compliance with this Section 1369.17. Registration under Section 1369.16 of the Codified Ordinances shall not negate the requirements for registration under this Section 1369.17 or any other requirement of Chapter 1369.

SECTION 2. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1369.17(b) shall be henceforth renumbered as Subsection 1369.17(c).

SECTION 3. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1369.17(c) shall be henceforth renumbered as Subsection 1369.17(b).

SECTION 4. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1369.17(d) shall be henceforth renumbered as Subsection 1361.18, VACANT, of Chapter 1341, “Definitions,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights. All references to the definition of “vacant,” including the one set forth in Subsection 1369.17(a) shall be accordingly updated to the renumbering set forth herein.

SECTION 5. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to enact and adopt a new Subsection 1369.17(d) to read as follows:

(d) Any plaintiff in a foreclosure action meeting the provisions of Subsection 1369.17(c) herein, shall, in addition to all other requirements of this Section, provide a cash bond to the Commissioner of Buildings **or designee**, in the sum of Fifteen Thousand Dollars (\$15,000.00), to secure the continued maintenance of the property throughout its vacancy and remunerate the City for any fees owed and expenses incurred in inspecting, securing, repairing and/or making such building safe by any legal

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means including, but not limited to, demolition.

SECTION 6. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to enact and adopt a new Subsection 1369.17(e) to read as follows:

(e) An annual administrative fee of One Thousand Five Hundred Dollars (\$1,500.00) will be deducted from the bond by the City for administrative expenses including, but not limited to, the processing, accounting, inspecting, securing, and other related functions inherent in the administration of the foreclosure bond. The fee will be deducted if the bond is in the possession of the City for the entire year, or any portion thereof. This annual fee is in addition to all other allowable expenses or related fines charged off against the bond. The annual fee shall be due January 1 of each calendar year. The first fee shall be prorated based upon the date the plaintiff in a foreclosure action meets the provisions of Subsection 1369.17(c) herein.

SECTION 7. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to enact and adopt a new Subsection 1369.17(f) to read as follows:

(f) In the event the City or one of its contractors, due to a lack of response of an owner or agent, is required to take action to abate a nuisance at a vacant property, the owner will be billed for the cost of abatement in accordance with Chapter 553, “Abatement of Nuisances,” or if the property is subject to a foreclosure bond as set forth in Subsection 1369.17(d) herein, said bond will be drawn upon to cover such costs.

SECTION 8. The above described amendments shall read as follows in Exhibit A. Existing language that has not moved is indicated by black font; language that has moved but otherwise not amended is indicated by blue font; and language that is newly enacted or amended is indicated by red font.

SECTION 9. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 10. This Ordinance shall take effect and be in force at the earliest time possible permitted by law.

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CAROL ANN ROE, Mayor
President of the Council

LAURIE SABIN
Clerk of Council

PASSED: October 3, 2018

EXHIBIT A

KEY:

Black font	Existing language that has not moved
Blue font	Language that has moved but otherwise not amended
Red font	language that is newly enacted or amended

1361.18 VACANT.

“Vacant” means a structure which is lacking habitual presence of human beings who have a legal right to be on the premises, or at which substantially all lawful occupancy has ceased, or which is substantially devoid of contents. In determining whether a business structure is vacant, it is relevant to consider, among other factors, the percentage of the overall square footage of the structure or floor area to the occupied space, the frequency with which persons are on the premises, the condition and value of any items in the structure and the presence of rental or for sale signs on the property; provided that a structure shall not be deemed vacant if it has been used for commercial, industrial or institutional purposes by a person entitled to possession for a period of at least three (3) months within the previous nine (9) month period and a person entitled to possession intends to resume occupation of the property. A structure containing multiple units with at least one (1) shared entrance to the individual units shall be deemed vacant if, and only if, each and every unit within said structure is vacant.

1369.17 VACANT BUSINESS STRUCTURES.

(a) The owner(s) of any business structure, including but not limited to commercial, industrial and institutional structures, that has become vacant as defined in **Section 1361.18**, shall within sixty (60) days after the structure becomes vacant register with the Commissioner of Buildings **or designee** and designate an authorized agent located in Cuyahoga County for each vacant structure. The registration shall remain valid **until December 31 of the year of the date of issuance**. The owner shall be required to annually renew the registration **by January 1 of each subsequent year for** as long as the structure remains vacant and shall pay an annual registration fee of one hundred dollars (\$100.00) for each registered structure. **The annual registration fee shall not be prorated**. The owner shall notify the Commissioner of Buildings **or designee** within twenty (20) days of any change in the registration information by filing an amended registration statement on a form provided by the Commissioner of Buildings **or designee** for such purposes. 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 City against the owner or owners of the structure. The failure of the owner of the vacant structure to obtain a deed for the property or to file the deed with the County Fiscal Office shall not excuse the owner from compliance with this Section 1369.17. Registration under Section 1369.16 of the Codified Ordinances shall not negate the requirements for registration under this Section 1369.17 or any other requirement of Chapter 1369.

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(b) The registration statement shall include the name, street address and telephone number of a natural person eighteen (18) years of age or older, designated by the owner(s) as the authorized agent for receiving, on behalf of such owner(s), notices of violation of City ordinances and for receiving process in any court proceeding or administrative enforcement proceeding related to the use or maintenance of the property or the structure including, but not limited to, notices and processes served in connection with the enforcement of the Business Maintenance Code and the Building Code. The authorized agent must maintain a physical office in Cuyahoga County, Ohio or must actually reside within Cuyahoga County, Ohio. An owner who is a natural person and who meets the requirements of this subsection as to location of residence or office may designate himself or herself as agent. By designating an authorized agent under the provisions of this Section 1369.17, the owner is consenting to receive any and all notices of violations of City ordinances and to receive process in any court proceeding or administrative enforcement proceeding related to the use or maintenance of the property or business structure including, but not limited to, proceedings related to the enforcement of the Business Maintenance Code and the Building Code, 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 purpose of this section until the owner notifies the Commissioner of Buildings or designee in writing of a change of authorized agent or until the owner files a new annual registration statement.

(c) If a foreclosure action has been filed with respect to property containing a vacant business structure, the plaintiff in the foreclosure action shall be required to comply with the provisions of this Section 1369.17 if **at least one** of the following apply:

- (1) The plaintiff in the foreclosure action is a mortgagee of the property; **and/or**
- (2) The plaintiff in the foreclosure action has assumed possession or control of the property.

(d) Any plaintiff in a foreclosure action meeting the provisions of Subsection 1369.17(c) herein, shall, in addition to all other requirements of this Section, provide a cash bond to the Commissioner of Buildings or designee, in the sum of Fifteen Thousand Dollars (\$15,000.00), to secure the continued maintenance of the property throughout its vacancy and remunerate the City for any fees owed and expenses incurred in inspecting, securing, repairing and/or making such building safe by any legal means including, but not limited to, demolition.

(e) An annual administrative fee of One Thousand Five Hundred Dollars (\$1,500.00) will be deducted from the bond by the City for administrative expenses including, but not limited to, the processing, accounting, inspecting, securing, and other related functions inherent in the administration of the foreclosure bond. The fee will be deducted if the bond is in the possession of the City for the entire year, or any portion thereof. This annual fee is in addition to all other allowable expenses or related fines charged off against the bond. The annual fee shall be due January 1 of each calendar year. The first fee shall be prorated based upon the date the plaintiff in a foreclosure action meets the provisions of Subsection 1369.17(c) herein.

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(f) In the event the City or one of its contractors, due to a lack of response of an owner or agent, is required to take action to abate a nuisance at a vacant property, the owner will be billed for the cost of abatement in accordance with Chapter 553, "Abatement of Nuisances," or if the property is subject to a foreclosure bond as set forth in Subsection 1369.17(d) herein, said bond will be drawn upon to cover such costs.