

## ORDINANCE 131

### **AN ORDINANCE OF THE CITY OF ELKINS, WEST VIRGINIA, AMENDING CHAPTER 5, ARTICLE I, OF THE ELKINS CITY CODE PROVIDING FOR ENACTMENT OF A VACANT BUILDING REGISTRATION PROGRAM.**

**WHEREAS**, Chapter 5 of the Elkins City Code provides City Council with the power to adopt, amend, supplement, or change the rules and regulations concerning the construction, alteration and repair of dwellings, buildings and other structures, etc., within the City; and,

**WHEREAS**, West Virginia Code § 8-12-13 through § 8-12-15 grants a municipality with the power and authority to regulate the erection, construction, repair or alteration of structures of every kind within the corporate limits of the municipality; and,

**WHEREAS**, West Virginia Code § 8-12-16c grants a municipality the power and authority to provide for the establishment of a vacant building registration program; and,

**WHEREAS**, in order to facilitate the public good and promote the general public welfare, the common council of the City of Elkins has determined that Chapter 5 of the Elkins City Code should be amended by adding the following:

#### VACANT STRUCTURES

1. Adoption.
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#### **1. ADOPTION.**

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

#### **2. PURPOSE.**

- (a) The City has determined that an uninspected and unmonitored vacant building 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 regulation of such vacant buildings.
- (b) Owners of uninspected and unmonitored 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.

- (c) This article ensures that, through a registration, inspection, and monitoring process, vacant buildings will be kept weather tight and secure from trespassers, will provide safe entry to police officers and firefighters in times of emergency, will not impede private and/or public efforts to rehabilitate or maintain surrounding buildings, and will not present otherwise a public hazard.
- (d) The City, by and through its departments, shall inspect and monitor vacant buildings, shall assess the effects of the condition of those buildings on nearby structures, and shall promote substantial efforts to rehabilitate and develop such buildings when appropriate.

These provisions will streamline and consolidate the existing procedure (that is, complaint, research, notification, inspection, orders, fines, liens, appeals and due process lien enforcement), by placing the responsibility to register and maintain vacant structures on the building owner before a building's condition falls into disrepair or otherwise merits a complaint.

### 3. DEFINITIONS.

- (a) **Definitions.** For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:
  - (1) **Boarded:** A building or structure subject to the provision of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.
  - (2) **Exterior maintenance and major systems:** The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, driveway, if any, area of the lot, as applicable and as enforced by the Code Enforcement Officer, particularly in connection with codes adopted by the City as well as all applicable local, state and federal laws.
  - (3) **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 bona fide pre-rental inspection.

- (4) **Open:** A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and/or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.
- (5) **Owner:** An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.
- (6) **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 the exterior maintenance and major systems of the building and the surrounding real property thereof, as defined in this section, are in violation of the building codes or health and sanitation codes and 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 thirty (30) 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, at a minimum, in order to keep the property and the major systems of the building in compliance with building and safety codes. The person or entity asserting that there has been continued utility service has the burden to produce actual bills evidencing utility service for the relevant period.

(b) All vacant structures shall also comply with the following criteria:

- (1) Exterior property areas are to be mowed regularly and non-cultivated gardens maintained at no more than 17 inches of growth. All noxious weeds are prohibited.
- (2) Structure is to be broom swept and cleared of all contents, not including building materials or components to be used in the future renovation at that structure.
- (3) Electrical service is to be provided to the building via temporary pole service on the exterior of the structure or create a permanent service for the structure and install two GFCI protected receptacles.

- (4) NEC and OSHA compliant string lighting is to be provided to the entire structure so that it may be illuminated as needed to view the structure.
  - (5) Unstable interior and exterior surfaces and components are to be removed. Unstable or unsound accessory buildings are to be razed or renovated.
  - (6) Using wood sheet goods; all loose, deteriorated and broken windows and doors are to be covered to eliminate the danger of their falling and to prevent the unwanted entry of trespassers. Such wood sheet goods are to be cut and neatly fit, not just nailed over the opening.
  - (7) All loose or deteriorated trim, gutter or overhang extensions (masonry or frame) are to be removed or reattached to prevent falling.
  - (8) Regular routine monitoring of the structure is to occur by the owner to ensure that the building is being kept in compliance with the above items.
  - (9) Utilities need to be connected to the structure.
- (c) **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, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the Code Enforcement Officer. The registration fee(s) as required by this section shall be billed by the City and shall be paid by last day of the month when the property has been registered. For purposes of this section, the following shall also be applicable:
- (1) 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;
  - (2) If an estate, the name and business address of the executor of the estate;
  - (3) If a trust, the name and address of all trustees, grantors, and beneficiaries;
  - (4) If a partnership, the names and residence addresses of all partners with an interest of ten percent or greater;
  - (5) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent or greater;

- (6) If an individual person, the name and residence address of that individual person.

#### **4. INSPECTION.**

At the time of registration, the Building Inspector, Code Enforcement Officer, Fire Chief, and Police Chief shall determine whether it is necessary for any or all of them to inspect the structure so as to identify any public safety issues needing addressed. Inspections shall also be available to verify the status of any property concerning occupancy, vacancy, etc. If an internal inspection is deemed necessary, the owner will be notified of the same and arrangements made for the same. If the owner fails or refuses to consent to and arrange for an inspection, the City will seek an administrative search warrant from a court of competent jurisdiction, which shall include the Municipal Court, to authorize inspection of the premises for the purpose of determining the structural integrity of the building, the repairs necessary to insure its structural integrity and that it will be safe for entry by fire fighters and police officers in time of emergency, and that the build in and its contents do not present a hazard to the public during the time that the building remains vacant.

#### **5. CORRECTIVE ACTION.**

The property owners shall be notified in writing of any corrective action deemed necessary for life, safety and building code matters by City officials, the applicable code provisions or regulations, and will be afforded a reasonable time to the corrective action. Corrective action concerning the occupancy of vacant structures is discussed later herein.

#### **6. REGISTRATION GENERALLY.**

- (a) At the time of adoption of this article, all owners of realty within the City of Elkins that contain a vacant structure, as defined above, shall register the same with the office of Code Enforcement of the City. For those structures that qualify as a vacant structure and after the adoption of this article, the owner thereof shall be required to register the structure with the Code Enforcement 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 Code Enforcement Officer, Building Inspector, Fire Chief, and Police Chief of the City, so as to ensure that the purpose of this article is met. Specifically, the above named City officers shall have the authority to require that the property owner provide a professional opinion (architect, engineer, etc.) to determine the structural integrity of the building, the repairs necessary to ensure its structural integrity and that it will be safe for entry by fire fighters and police officers in time of emergency, and that the building and its contents do not present a hazard to the public during the time the building remains vacant. The above named officers shall have the authority to issue orders to the owner for corrective action deemed necessary. The Building Inspector and Fire Chief shall rely upon the West Virginia State Building Code and Fire Code, as well as other applicable law, for guidance during any such structural review.

(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, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and 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, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for 45 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. One registration statement may be filed to include all vacant buildings of the owner so registering, but each 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.

## 7. **RIGHT OF APPEAL.**

- (a) **Appeal Rights.** The owner shall have the right to appeal the imposition of the registration fees to the Code Enforcement Officer; upon filing an application in writing to that department 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 article 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 Code Enforcement Officer or his designee upon application of the owner and upon review and advice of the Building Inspector; if the owner:

- (1) Demonstrates with satisfactory proof to the Code Enforcement Officer 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 Code Enforcement Officer 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 Code Enforcement Officer 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 Code Enforcement Officer, 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 document able as necessary.
- (c) Within 30 days, or as soon thereafter as possible, after the waiver application is received by the Code Enforcement Officer 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 Code Enforcement Officer or his designee, and the Code Enforcement Officer 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 Code Enforcement Officer 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 Randolph County.

## **8. AMENDING INFORMATION.**

- (a) **Duty to Amend Registration Statement.** If the status of the registration information changes during the course of any calendar year, 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.

## **9. REINSPECTION.**

All vacant structures are subject to reinspection on an annual basis or as deemed necessary pursuant to Section 4.

## **10. 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 subsection (b)(4) above, 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.
- (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.

## **11. RELATION TO OTHER CODES AND LAWS.**

It is to be understood that the intent and purpose of this Article are separate and distinct from other parts and sections of the Codified Ordinances of the City of Elkins 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 Elkins Municipal Code.

## **12. SEVERABILITY.**

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

**THEREFORE BE IT ORDAINED** and enacted by the Common Council of Elkins, West Virginia, that City Code section 5-10A be added and shall read as shown above.



If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the City Council determines that it would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective upon passage.

**PASSED AND APPROVED ON FIRST READING AUGUST 18, 2011.**

**PASSED AND APPROVED ON SECOND AND FINAL READING THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2011.**

**CITY OF ELKINS, WEST VIRGINIA**

**/s/ Duke Talbott, Mayor**

**Attest:**

**/s/ Philip J. Graziani, City Clerk**