

Ordinance 2022-06

## **City of Weston Vacant Building and Vacant Property Registration and Maintenance Program**

WHEREAS the City of Weston intends to pass an ordinance concerning vacant buildings and vacant properties within the city limits of Weston,

WHEREAS, West Virginia Code §8-12-16C permits municipalities to adopt rules concerning the registration of vacant buildings and vacant properties,

WHEREAS, the City of Weston has determined that vacant buildings contribute to various safety issues in law enforcement and fire protection;

WHEREAS, the City of Weston has determined that vacant buildings contribute to various nuisance problems such as, but not limited to, vagrancy and uninhabitable conditions;

WHEREAS, the City of Weston now adopts the following ordinance, to be known as the "Vacant Structure/Property Ordinance"

### **§1 ADOPTION**

Pursuant to West Virginia Code §8-12-16C, the City of Weston enacts an updated Vacant Building and Property Registration and Maintenance Program. Any prior vacant structure or vacant building and property registrations programs or codes or ordinances ("prior codes") are hereby repealed and replaced with this ordinance.

Buildings and property registered under prior codes shall be considered registered for the purpose of this ordinance. However, the owners of said buildings and/or property must alert the Building Code Official to prior registration(s) and the Building Code Official shall take measures to transition any registration payments or time computations into the parameters set by this ordinance.

Any civil actions or other legal processes brought under prior codes are still in effect until the resolution of such issue and shall be governed by the language and rules of the prior code under which the issue was instituted.

### **§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 ordinance 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.

Weston Vacant Structure and Vacant Property Registration Ordinance

(d) The City, by and through its departments (particularly the Building Code Enforcement Department) 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 ordinance, 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 ordinance 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 ECDD, particularly in connection with codes adopted by the City as well as all applicable local, state and federal laws.

(3) Lawful Business: the term "lawful business" shall mean any business not forbidden by federal, state, or municipal laws. The term "lawful business" shall also mean that the business owner has acquired and maintains a business license issued by the City of Weston.

(4) Occupied: Any building or structure shall be deemed to be occupied if:

- a. one or more persons actually conducts a lawful business in the building/structure;
- b. one or more persons reside in all or any part of the building as:
  - i. the licensed business occupant;
  - ii. 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 ordinance, 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.

Weston Vacant Structure and Vacant Property Registration Ordinance

(5) Open: A building or structure subject to the provisions of this ordinance 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.

(6) 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 ordinance, and as set forth below.

(7) Vacant Building/Vacant Structure means a building or structure shall be deemed to be vacant if:

- a) no person or persons actually, currently conducts a lawfully licensed business, including City business, on the premises; and/or
- b) 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; and/or
- c) A building or structure shall be deemed vacant and subject to the registration and possible penalty provisions provided herein if the exterior maintenance and other relevant systems of the building and the surrounding real property thereof are in violation of the City building codes or applicable City 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 ordinance, 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.

(8) Vacant Property/Vacant Lot means any real estate on which no building is erected and no routine activity occurs, provided, however, that proper routine maintenance of a vacant lot whereon no property violations exist shall constitute "routine activity" for the purposes of this ordinance, whether or not that vacant property/lot is used in conjunction with improved adjacent real estate.

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 6 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.

Weston Vacant Structure and Vacant Property Registration Ordinance

(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.

(10) The Building Code Official may allow, at his discretion, deviations from these requirements if the situation and fairness allow such deviation(s).

The property/structure shall not be deemed "occupied" simply because the above measures have been taken or are being taken to conform to the requirements of §3(B) of this ordinance.

**§4 REGISTRATION**

(A) The registration of buildings and payment of fees shall adhere to the schedule of fees and payments outlined in Addendum A of this ordinance and other applicable provisions of this ordinance.

(B) The requirements of this ordinance 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 with the City:

- 1) a notarized registration statement including the street address and parcel number of each such vacant property/building;
- 2) the names and addresses of all owners, as hereinafter described; and
- 3) any other information deemed necessary by the Building Code Enforcement Department.
- 4) In the event the owner(s) of structure/property deemed vacant does not register the structure, the City of Weston shall cause the structure/property to be registered and in the event the owner(s) do not pay the registration fees then the City shall have the authority to institute legal proceedings consistent with legal remedies identified in this ordinance.

The registration fee(s) as required by this ordinance shall be billed to the owner(s) and shall be paid within thirty (30) days of the date of billing.

(C) For purposes of this ordinance, 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;

## Weston Vacant Structure and Vacant Property Registration Ordinance

- (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.

### **§5 INSPECTION.**

At the time of registration, the Building Code Official, 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, before performing any inspection, must 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 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 that the building remains vacant.

### **§6 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 perform the corrective action. Corrective action concerning the occupancy of vacant structures is discussed later herein.

### **§7 REGISTRATION GENERALLY.**

- (A) On June 1, 2022, all owners of property within the City of Weston that contain a vacant structure, as defined above, shall register the same with the Building Code Enforcement Department. For those structures that subsequently qualify as a vacant structure after June 1, 2022, the owner thereof shall be required to register the structure with the Building Code Enforcement Department within thirty (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 Code Official, Fire Chief, and Police Chief of the City, so as to ensure that the purposes of this ordinance are 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 Code Official and Fire

Weston Vacant Structure and Vacant Property Registration Ordinance

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 vacant structure or vacant property owners at issue are 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 30 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. See Addendum A for registration and vacant building fees.

**§8 RIGHT OF APPEAL/WAIVER OF REGISTRATION FEE.**

(A) Appeal Rights. The owner shall have the right to appeal the imposition of the registration fees to the City Manager. An appeal shall exist upon the filing of an application, in writing, to the Building Code Enforcement 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 ordinance.

Within 5 days of receiving an appeal, the Building Code Official shall alert the City Manager to such appeal and the City Manager shall hear said appeal within 30 calendar days of the date the appeal was filed. The City Manager shall provide the parties with adequate notice of any hearing. Parties to the hearing may be represented by another person.

The decision of the City Manager may be appealed to the Weston Municipal Court.

The decision of the Weston Municipal Court may be appealed to any court of competent jurisdiction.

(B) One Time Waiver of Registration Fee A one-time waiver of the registration fee per property/structure is available. A waiver shall not last more than 60 days unless, in his discretion, the City Manager, permits a longer waiver or an extension of any waiver. A party may seek such waiver through the Building Code Enforcement Department. The Building Code Official shall provide such waiver to the City Manager within 5 days of receiving such waiver request. The waiver may be granted by the City Manager or his designee upon review and advice of the Building Code Official and/or other relevant authorities, 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

Weston Vacant Structure and Vacant Property Registration Ordinance

(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 or rent 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 document able 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, 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, the owner may appeal to the Weston Municipal Court. To constitute a timely appeal, the owner must file an application in writing no later than fifteen (15) calendar days from the date of the City Manager or his designee's decision. The Municipal Court shall either grant or deny the appeal. Thereafter the decision of the Municipal Court is final unless within fifteen (15) days of such decision is appealed to a court of competent jurisdiction. Such appeal shall stay any registration and/or payment of registration fees or other actions available to Weston concerning the property/structure at issue related to vacant building registration.

**§9 AMENDING INFORMATION.**

(a) Duty to Amend Registration Statement. If the status of the registration information changes, it is the responsibility of the owner, responsible party, or agent for the same, to contact the Building Code Enforcement Department with thirty (30) days of the occurrence of such change and advise the Building Code Official in writing of those changes.

(b) Exceptions. This ordinance shall not apply to any building owned by the United States, the state of West Virginia, the City of Weston, or any of their respective agencies or political subdivisions.

(c) Violations and Penalties for Failure to Register. The Building Code Official, or his designee, shall have the authority to determine fine amounts for failure to register a vacant building. 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 ordinance or to pay any fees required to be paid pursuant to the provisions of this ordinance, within thirty (30) 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. The Building Code Official, or his designee, shall have the authority to suspend or reduce fines that amount to over \$100. The Building Code Official shall use his discretion in suspending or reducing fines. An aggrieved party may challenge such fine Court by using the procedure(s) outlined in §8 of this ordinance.

Weston Vacant Structure and Vacant Property Registration Ordinance

**§10 REINSPECTION.**

All vacant structures are subject to reinspection on an annual basis or as deemed necessary pursuant to §5 of this ordinance.

**§11 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 §8 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 ordinance shall arise whenever the fees and charges as described in this ordinance are levied or imposed. The liens created in this ordinance shall be subject to the provisions of relevant federal, state, or municipal law that control liens, legal processes related to liens, and remedies related to liens, or other laws that are related to liens.

(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 City of Weston 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. The City of Weston shall institute the process of forfeiture in any court of competent jurisdiction, with an aggrieved party having all available rights to appeal said court decision. 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 ordinance in the same manner as the prior owner and must begin the registration process anew if said property remains vacant.

**§12 UNPAID REGISTRATION FEES/LEGAL REMEDIES**

For unpaid registration fees, the City of Weston is authorized to take any legal measures necessary and available to obtain any unpaid fees.

Unpaid registration fees will result in the inability of the owner to obtain other city permits (such as building, business, etc.). The Building Code Official may use his discretion to determine any hardship exceptions to this rule.

**§13 REGISTRATION FEES USED FOR SPECIFIC PURPOSES**

Consistent with West Virginia Code §8-12-16C, all registration fees shall be deposited into their own account and the fees collected shall be used to:

- improve public safety efforts, especially for police and fire personnel, who most often contend with the dangerous situations manifested in vacant properties;
- monitor and administer this program;
- repair, close or demolish a vacant structure as authorized by WV Code §8-12-16.



Weston Vacant Structure and Vacant Property Registration Ordinance

**§14 RELATION TO OTHER CODES AND LAWS.**

It is to be understood that the intent and purpose of this Ordinance are separate and distinct from other parts and sections of the Codified Ordinances of the City of Weston and the general laws of the State of West Virginia which may also be applicable. The provisions of this Ordinance 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 Weston City Code, Weston Building Code, or any other applicable provisions of the City of Weston municipal code.

**§15 SEVERABILITY.**

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

**ADDENDUM A OF 2022 VACANT STRUCTURE/PROPERTY ORDINANCE**  
**2022-06**

Step 1: Building gets registered on Date X and non-refundable registration fee is paid

Step 2: From Date X to the first day of the second full quarter after Date X, owner pays no vacant fees and hopefully gets the building un-vacant (this ensures that no matter what date you register, everyone gets a full quarter to get un-vacant)

Step 3: on first day of second full quarter after Date X, City begins billing owner a vacant property fee

- Bill is quarterly
- Owner responsible for alerting city to the property becoming un-vacant

Step 4: if building becomes un-vacant between Date X and start of second full quarter after Date X, then no vacant fee is charged and registration fee is not refunded

Example:

Quarters begin on: January 1, April 1, July 1, October 1

Building gets registered on March 31, 2022

Owner pays registration fee within 30 days of March 31, 2022

March 31, 2022, is still in 1<sup>st</sup> quarter

**Weston Vacant Structure and Vacant Property Registration Ordinance**

So, the vacant building fees do not begin to be added up until July 1 → the quarter from April 1 to June 30 is the “grace quarter” if you will

If owner becomes un-vacant in the midst of a quarter, the quarterly fee shall be prorated for that quarter and be paid before removal from registry; removal from registry shall also include a valid certificate of occupancy as proof the structure is not vacant

In the event the owner becomes re-vacant, the same process begins again

**Registration Fee**

\$250 per property/structure for expenses in operating this program.

\$125 per property/structure if voluntarily registered by owner. The \$250 fee shall remain for any buildings that the City of Weston must register.

**Vacancy Fee Structure**

**Commercial/Industrial**

Year 1: \$250/quarter

Year 2: \$500/quarter

Year 3: \$1000/quarter

Year 4: \$2000/quarter

Year 5: \$4000/quarter

Year 6 or longer: \$7000/quarter

**Residential**

Year 1: \$150/quarter

Year 2: \$300/quarter

Year 3: \$600/quarter

Year 4: \$1200/quarter

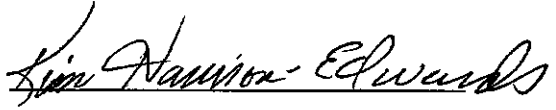
Year 5: \$2400/quarter

Year 6 or longer: \$4000/quarter

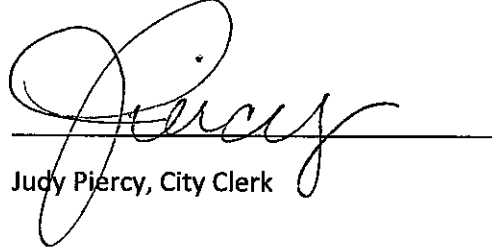
Weston Vacant Structure and Vacant Property Registration Ordinance

First Reading 02/22/2022

Second Reading 03/07/2022



Kim Harrison-Edwards, Mayor



Judy Piercy, City Clerk