

CHAPTER 16 - VACANT BUILDINGS

SECTION:

4-16-1. - DECLARATION OF POLICY.

The purpose of this chapter is to protect the public health, safety, and welfare by enactment of this chapter which:

- (A) Establishes a program for identification, registration, and regulation of buildings which are or become vacant on and after the effective date of this chapter.
- (B) Determines the responsibilities of owners of vacant buildings.
- (C) Provides for administration, enforcement, including abatement of public nuisances, and imposition of penalties.

This chapter shall be construed liberally to effect its purposes.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-1)), 1-23-2012)

4-16-2. - OTHER ORDINANCES.

This chapter shall not be construed to prevent the enforcement of other applicable ordinances, codes, legislation, and regulations which prescribe standards other than are provided herein, and in the event of conflict, the most restrictive shall apply.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-2)), 1-23-2012)

4-16-3. - DEFINITIONS.

Unless otherwise expressly stated or clearly indicated by the context, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section:

<p><i>ABANDONED RESIDENTIAL BUILDING:</i></p>	<p>As defined in 65 ILCS 5/11-20-15.1, as amended, a residential dwelling unit that has been unoccupied by any lawful occupant or occupants for at least ninety (90) days, and for which after such ninety (90)-day period the City has made good faith efforts to contact the legal owner or owners of the property or, if known, the agent of the owner, and no contact has been made.</p>
<p><i>BOARDED BUILDING.</i></p>	<p>A building which has had, in a manner intended to be temporary or permanent, any or all openings, which openings are windows or doors which were present for the purpose of light, ventilation or egress, some material whether opaque, solid or transparent, affixed to such openings, from the interior or exterior of the building, for the purpose of securing or preventing access or damage to the building or its components.</p>

<i>BUILDING.</i>	Any structure occupied or intended for supporting or sheltering any occupancy.
<i>DANGEROUS BUILDING.</i>	A building defined as a "dangerous, unsafe building" in <u>section 4-12-1</u> of this title, as it may be amended. Such buildings are public nuisances.
<i>DIRECTOR.</i>	The Community and Economic Development Director or his/her designee.
<i>OWNER.</i>	Any person, agent, operator, firm, or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county, or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.
<i>PERSON.</i>	Includes a corporation, a partnership, or other entity as well as an individual.
<i>PREMISES.</i>	A lot, plot or parcel of land including any structure thereon.
<i>PUBLIC NUISANCE.</i>	Includes the following:
	(A) The physical condition, or uses of any building regarded as a public nuisance at common law, under the Illinois Compiled Statutes, or under this code; or
	(B) Any physical condition, use or occupancy or any building or its appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, and unsafe fences or structures; or
	(C) Any building which has unsanitary sewerage or plumbing facilities; or
	(D) Any building designated by the director as unsafe for human habitation or use; or
(E) Any building which is manifestly capable of being a fire hazard, or manifestly unsafe or insecure as to endanger life, limb or property; or	

	(F) Any building which is unsanitary, or which is littered with rubbish or garbage, or which has an uncontrolled growth of weeds; or
	(G) Any building that is dangerous, in a state of dilapidation, deterioration or decay; faulty construction; open or vacant and the doors, windows, or other openings are boarded up or secured, by any means other than conventional methods used in the design of the building or permitted for new construction of similar type; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and dangerous to anyone on or near the premises; or
	(H) Any building defined as a "dangerous, unsafe building" by <u>section 4-12-1</u> of this title, as it may be amended.
<i>UNOCCUPIED BUILDING.</i>	A building or portion thereof which lacks the habitual presence of human beings who have a legal right to be on the premises, including buildings ordered vacated by the director pursuant to authority granted to him/her by this code.
	In determining whether a building is "unoccupied," the director may consider these factors, among others:
	(A) A building at which substantially all lawful residential or business activity has ceased.
	(B) The percentage of the overall square footage of occupied to unoccupied space or the overall number of occupied and unoccupied units shall be considered.
	(C) The building is substantially devoid of contents. The condition and value of fixtures or personal property in the building are relevant to this determination.
	(D) The building lacks utility services, i.e., water, sewer, electric or natural gas.
	(E) The building is the subject of a foreclosure action.
	(F) The building is not actively for sale as part of a contractual agreement to sell the building, the building lacks "for sale," "for rent" or similar signage.
	(G) The presence or recurrence of uncorrected code violations.

<i>VACANT BUILDING.</i>	A building or portion of a building which is:
	(A) Unoccupied and unsecured; or
	(B) Unoccupied and secured by boarding or other similar means; or
	(C) Unoccupied and a dangerous structure; or
	(D) Unoccupied and condemned by the director pursuant to applicable provisions of this code; or
	(E) Unoccupied and has multiple code violations; or
	(F) Unoccupied and the building or its premises has been the site of unlawful activity within the previous six (6) months; or
	(G) Condemned by the director and unlawfully occupied; or
	(H) Unoccupied for over one hundred eighty (180) days and during which time the director has issued an order to correct public nuisance conditions and same have not been corrected in a code compliant manner; or
(I) Unoccupied for over two (2) years.	
	But not including:
	Unoccupied buildings which are undergoing construction, renovation, or rehabilitation and which are in compliance with all applicable ordinances, codes, legislation, and regulations, and for which construction, renovation or rehabilitation is proceeding diligently to completion.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-3)), 1-23-2012)

4-16-4. - DETERMINATION.

Pursuant to 65 ILCS 5/11-20 et seq. and the City's powers as a home rule entity, the Director may evaluate all buildings in the city he/she believes to be unoccupied and make a determination for each as to whether the building is a "vacant building" within the meaning of section 3 of this chapter. The director may determine that a building which meets any of the criteria set forth in section 3 of this chapter is not to be regulated under this chapter for a stated period, if upon consideration of reliable, substantiated and sufficient evidence, he/she determines that regulation of the building under this chapter would not serve the public health, welfare, and safety and makes written findings in support of his/her decision. Any such

determination shall be in writing and shall state the factual basis for the determination. For buildings the director determines to be "vacant buildings," he/she shall, within seven (7) days of making that determination, send notice of his or her written determination, with the factual findings, to the last owner of record listed by the Cook County recorder of deeds. Said notice of determination shall be sent first class United States mail, with proper postage prepaid. Failure of delivery shall not excuse a person from complying with this chapter. The director may personally serve or cause personal service of the notice of determination. Any person making such service shall execute an affidavit attesting to the facts of service. The director shall maintain an affidavit of such mailing for each notice of determination sent.

The notice shall specify a date and time on which the owner shall allow for a code compliance inspection of the interior of the vacant building to determine the extent of compliance with city property, building codes, health, fire, water and sewer codes. The owner shall pay the five hundred dollar (\$500.00) inspection fee to the city within thirty (30) days of the inspection. An unpaid fee shall be a lien upon the premises.

The notice shall contain a statement of the obligations of the owner of a building determined to be a vacant building, a copy of the registration form the owner is required to file pursuant to section 6 of this chapter, and a notice of the owner's right to appeal the director's determination.

(Ord. No. 117-0-09; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-4)), 1-23-2012)

4-16-5. - APPEAL OF DETERMINATION.

- (A) An owner of a building determined by the director to be a vacant building as provided for in this chapter may appeal that determination to the city manager. Such appeal shall be in writing and shall be filed with the city manager within fifteen (15) days of the date of mailing of the notice of determination. The filing of an appeal stays the owner's obligation to register his/her building as required by section 6 of this chapter. The appeal shall contain a complete statement of the reasons the owner disputes the director's determination, shall set forth specific facts in support thereof, and shall include all evidence the owner relies upon to support the appeal. The city manager shall decide the appeal on the basis of facts presented by the owner in his or her written appeal and the director's written determination.
- (B) The burden is upon the owner to present sufficient evidence to persuade the city manager that had the evidence been known to the director at the time the director made the determination, the director would more likely than not have determined that the subject building was not a "vacant building" within the meaning of this chapter.
- (C) The city manager shall send written notice of his/her decision to the owner within twenty (20) days of his or her receipt of the appeal. The city manager may, but is not required to, seek additional information from the owner.
- (D) An owner who wishes to challenge applicability of this chapter to his/her building without the director's determination having been made, shall set forth specific facts to support nonapplicability in a writing to the director. In the event the director determines that the subject building is a "vacant building," the owner shall have the right to appeal the director's determination to the city manager as provided for herein.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-5)), 1-23-2012)

4-16-6. - OBLIGATION TO REGISTER.

The owner of a building who knows, or from all the facts and circumstances should know, that his or her building is or has become a "vacant building" within the meaning of this chapter after the effective date of this chapter or the owner of a building, which the director determines at any time to be a "vacant building," or the owner of a building whose appeal from the director's determination has been denied by the city manager shall take the actions provided for in this section within fifteen (15) days after either the date of the director's notice of determination or occurrence of the facts which would cause a reasonable person to believe that the building was a "vacant building," or denial of the appeal, whichever is applicable. Registration does not exonerate the owner from compliance with all applicable codes and ordinances, including this chapter, nor does it preclude any of the actions the city is authorized to take pursuant to this chapter or elsewhere in this code.

(Ord. No. 110-0-03)

(A) *Registration Requirements.*

1. a. Register the building with the director of Community and Economic Development, on a form provided by the director and pay the four hundred dollar (\$400.00) annual nonprorated vacant building registration fee. The form shall include, as a minimum, the name, street address, and telephone number of the owner; the case name and number of any litigation pending concerning or affecting the building, including bankruptcy cases; and the name, street address, and telephone number of all persons with any legal interest in the building or the premises. The form shall require the owner to identify a natural person twenty one (21) years of age or older who maintains a permanent address in Cook County, Illinois, to accept service on behalf of the owner with respect to any notices the director sends pursuant to this chapter or service of process in any proceeding commenced to enforce any provision of this chapter, and file with the director on the registration form, the name, address, telephone number, of said person. A street address is required. A post office box is not an acceptable address.
- b. The form shall state that the owner, by affixing his or her signature, is advised that the city will not issue real estate transfer tax stamps without city inspectors having first conducted an interior inspection for code compliance.
2. Renew the vacant building registration each year on the anniversary date of the first filing for the time the building remains vacant and pay the required four hundred dollar (\$400.00) annual fee; and
3. File an amended registration within fifteen (15) days of any change in the information contained in the annual registration. A new registration is required for any change in ownership whatsoever.

(Ord. No. 117-0-09)

(B) *Notice; Inspection.* The form shall require the owner to indicate his or her "acceptance of notice by posting" consenting to service of notices sent or required to be sent, pursuant to this chapter, by posting on the building if the owner fails to renew the registration if required, or maintain as current with the director the information required regarding the person designated to accept notice and service of process.

The owner shall allow for a code compliance inspection of the interior of the vacant building and shall pay the five hundred dollar (\$500.00) fee therefor within thirty (30) days of the inspection. Such inspection will determine the extent of compliance with city property, building codes, health, fire, water and sewer codes. The city shall send the inspection report to the owner within thirty (30) days.

- (C) *Insurance.* Obtain liability insurance and maintain such insurance for as long as the building is vacant, and file evidence of such insurance with the director, as follows: five hundred thousand dollars (\$500,000.00) for a vacant residential building of one to three (3) units; seven hundred fifty thousand dollars (\$750,000.00) for a vacant residential building of four (4) to eleven (11) units; one million dollars (\$1,000,000.00) for a vacant residential building of twelve (12) to forty eight (48) units; two million dollars (\$2,000,000.00) for a vacant residential building of more than forty eight (48) units; and two million dollars (\$2,000,000.00) for a vacant manufacturing, industrial, storage, or nonresidential commercial building.
- (D) *Vacant Building Plan.* At the time a building is registered as required herein, the owner shall submit a vacant building plan. The director may prescribe a form for the plan. If the owner fails to submit the plan as provided for by this chapter, the director may determine the plan. The plan shall contain the following as a minimum:
1. A plan of action to repair any doors, windows, or other openings which are boarded up or otherwise secured by any means other than conventional methods used in the design of the building or permitted for new construction or similar type. The proposed repair shall result in openings being secured by conventional methods used in the design of the building or by methods permitted for new construction of similar type with board removed. Boarding shall be accomplished with materials and methods described by the director and available from the director or on the city website: www.cityofevanston.org. The owner shall maintain the building in an enclosed and secure state until the building is reoccupied or made available for immediate occupancy. If the owner demonstrates that securing of the building will provide adequate protection to the public, the Director may waive the requirement of an enclosure.
 2. For buildings and premises thereof which are determined by the director as being or containing public nuisances, as defined in section 3 of this chapter, as amended, then the vacant building plan shall contain a plan of action to remedy such public nuisance(s).
 3. A time schedule identifying a date of commencement of repair and date of completion of repair for each improperly secured opening and nuisance identified by the director.
 4. When the owner proposes to demolish the vacant building, then the owner shall submit a plan and time schedule for such demolition.
 5. A plan of action to maintain the building and premises thereof in conformance with this chapter.
 6. A plan of action, with a time schedule, identifying the date the building will be habitable and occupied or offered for occupancy or sale. The time schedule shall include date(s) of commencement and completion of all actions required to achieve habitability. No plan which provides for compliance with this chapter or, which will not, as determined by the director, achieve such compliance, within six (6) months, in the case of a vacant boarded building, and two (2) years, in the case of a vacant, unboarded, and code compliant building will be approved.
 7. All premises upon which unoccupied or vacant buildings are located and the exteriors shall at all times be maintained in compliance with this code.
 8. Exterior lighting according to standards established by the director and available from the director or on the city website: www.cityofevanston.org.
- (E) *Security Guard Service.* On written notice of the director, provide bonded, licensed, and insured security guard service at the building between the hours of three o'clock (3:00) P.M. and eight o'clock (8:00) A.M. Such service to remain in place until the director gives written notice that the service is no longer required. Such service shall be required when the director makes a written determination that

the vacant building constitutes a fire hazard, is otherwise dangerous to human life or the public welfare, involves illegal or improper use, occupancy, or maintenance, under such conditions that boarding and securing the building are insufficient to prevent the actual or threatened harm.

- (F) *Signage.* Affixed to any building which is boarded, no smaller than two feet by two feet (2' × 2') and compliant with the city's sign regulations ordinance, chapter 12 of this title, as amended, and providing the following information: The name, address, and telephone number of the owner, and in addition, for buildings which are the subject of a foreclosure action, the name, address, and telephone number of the plaintiff and the plaintiff's attorney, if any, in the foreclosure action. The sign must be placed so that its message is legible from the public way.

(Ord. No. 110-0-03)

(Ord. No. 110-0-03; Ord. No. 117-0-09; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-6)), 1-23-2012)

4-16-7. - APPROVAL OF PLAN.

- (A) *Review Building Plan.* The director shall review the proposed vacant building plan in accordance with the standards below. The director shall send notice to the owner of the vacant building of his/her determination.
- (B) *Standards For Plan Approval.* In considering the appropriateness of a vacant building plan, the director shall include the following in his or her consideration and shall make written findings as to each:
1. The purposes of this chapter and intent of the city council to minimize the time a building is boarded or otherwise vacant.
 2. The effect of the building and the proposed plan on adjoining property.
 3. The length of time the building has been vacant.
 4. The presence of any public nuisances on the property.
 5. The likelihood that the plan or portion(s) thereof will prevent or ameliorate the condition it is designed to address.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-7)), 1-23-2012)

4-16-8. - AUTHORITY TO MODIFY PLAN, RIGHT OF APPEAL.

The director shall, upon notice to the vacant building owner, have the right to modify the vacant building plan by modifying the dates of performance, the proposed methods of action, or by imposing additional requirements consistent with this chapter he or she deems necessary to protect the public health, safety, or welfare.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-8)), 1-23-2012)

4-16-9. - FAILURE TO COMPLY WITH PLAN.

Failure to have an approved plan within thirty (30) days of filing the registration form or failure to comply with the approved plan shall constitute a violation of this chapter subjecting the owner of the building to penalties as provided in this chapter and to any remedies the city may avail itself of as provided for herein and elsewhere in this code, including, but limited to, an action to compel correction of property maintenance violations.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-9)), 1-23-2012)

4-16-10. - OTHER ENFORCEMENT.

The registration of a vacant building shall not preclude action by the city to demolish or to take other action against the building pursuant to other provisions of this chapter, this code, or other applicable legislation, including the following:

- (A) Cutting and removal of neglected weeds, grass, trees, and bushes as authorized by this Code, as amended, and 65 ILCS 5/11-20-7;
- (B) Pest control activities, as authorized by this Code, as amended, and 65 ILCS 5/11-20-8;
- (C) Removal of infected trees as authorized by this Code, as amended, and 65 ILCS 5/11-20-12;
- (D) Removal of garbage, debris, and graffiti and related activities as authorized by this Code, as amended, and 65 ILCS 5/11-20-13; and
- (E) Removal, securing, and enclosing of abandoned residential properties as authorized by this Code, as amended, and 65 ILCS 5/11-31-1.01.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-10)), 1-23-2012)

4-16-11. - REAL ESTATE TRANSFER STAMPS.

A premises upon which is situated a vacant building for which inspection fees or registration fees imposed pursuant to this chapter have not been paid in full is not eligible for city real estate transfer tax stamps. Unpaid fees shall be a lien upon the property.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-11)), 1-23-2012)

4-16-12. - CERTIFICATION.

A certificate of code compliance for vacant buildings issued by the Community and Economic Development Department and payment in full of all fees imposed pursuant to this chapter are required prior to any occupancy of a vacant building.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-12)), 1-23-2012)

4-16-13. - BOARDING OF BUILDINGS.

It is the policy of the City of Evanston that boarding is a temporary solution to prevent unauthorized entry into a vacant building and that boarded buildings are a public nuisance. A vacant building may not remain boarded longer than six (6) months unless an extension of that time is part of a plan approved by the director.

A vacant building which is unboarded and code compliant and for which boarding is determined by the director on the basis of police reports, citizen complaints, and other information of other type considered reliable by reasonable persons, to not require boarding to prevent unauthorized entry may not remain vacant for more than two (2) years without an approved plan for occupancy, sale, demolition, or other disposition of the building.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-13)), 1-23-2012)

4-16-14. - ENFORCEMENT AND PENALTIES.

- (A) Any person found to have violated any provision of this chapter shall be subject to a minimum fine of two hundred fifty dollars (\$250.00) per day per violation to a maximum of one thousand dollars (\$1,000.00) per day per violation, in addition to any other legal or equitable remedies available to the

city. Such other remedies include, but are not limited to, injunctive relief, application to a court of competent jurisdiction for a receiver, demolition, or condemnation, contracting for the repair or purchase of the premises, or foreclosure of any lien the city may have thereon.

(Ord. No. 117-0-09)

- (B) A separate and distinct offense shall be committed each day on which such person or persons shall violate the provisions of this chapter.
- (C) The city may enforce this chapter in its administrative adjudication system or through the court system. Administrative adjudication shall be conducted in accordance with the provisions of title 11, chapter 1 of this code, as it may be amended.
- (D) Nothing herein contained shall prohibit the city from immediately condemning as provided for in this code a building or taking other immediate action upon a determination that the building is a public nuisance or poses an imminent danger to the occupants of the building, or the public, health, safety and welfare.

(Ord. No. 110-0-03)

(E) Priority Liens: The priority lien procedure described in this Subsection (E) shall apply only to costs incurred for those property maintenance activities, described in Section 4-16-10 of this Code, as amended, performed on abandoned residential properties and is an alternative to traditional liens. If a bill sent pursuant to this Chapter is not paid in full within sixty (60) days of the date of the bill, the City shall have the authority to file and record a priority lien against the abandoned residential property, pursuant to 65 ILCS 5/11-20-15.1, as amended, in the following manner:

1. *Notice of Lien.* The City or the person performing the service by authority of the City, in its, his/her own name, may file a notice of a priority lien in the Office of the Cook County Recorder of Deeds. The notice of lien shall be filed within one (1) year after the cost and expense is incurred. If, for any one property, the City engaged in any nuisance abatement activity described in Section 10 of this Chapter, as amended, on more than one occasion during the course of one (1) year, then the City may combine any or all of the costs of those activities into a single notice of lien.

The notice of lien shall consist of a sworn statement setting forth:

- a. A description of the abandoned residential property that sufficiently describes the parcel;
- b. The amount of the cost incurred or payable for the activities;
- c. The date or dates when such cost was incurred by the City or someone working on behalf of the City; and
- d. A statement that the lien has been filed pursuant to one or more of the property maintenance activities described in Section 8.40.030 and authorized by 65 ILCS 5/11-20-7(d), 65 ILCS 5/11-20-8(d), 65 ILCS 5/11-20-12(d), 65 ILCS 5/11-20-13(e), 65 ILCS 5/11-31-1.01, as applicable.

After recording, the notice of lien shall be sent by certified mail to the owner, his/her agent or legal representative or occupant in legal possession or control of the premises and, if different, to the person who received the tax bill for the preceding year. The City may not file a lien if a lender has provided notice to the City that said owner has performed, or will perform, remedial actions; provided, however, that the remedial actions must be performed or initiated in good faith within thirty (30) days of the lender's notice to the City.

2.

Recordkeeping. To enforce a priority lien pursuant hereto, the City must maintain contemporaneous records that include, at a minimum:

- a. A dated statement of a finding by the City that the property has become abandoned residential property;
 - b. The date when the property was first observed to be unoccupied by any lawful occupant;
 - c. A description of the actions taken by the City to contact the legal owner of the property, or if known, any agent of the owner;
 - d. A statement that no contacts were made with the legal owner or, if known, any agent of the owner;
 - e. A dated certification by the Director of the necessity and specific nature of the work performed;
 - f. A copy of the agreement with the person or company performing the work and the rates and estimated cost of the work, if applicable;
 - g. Detailed invoices and payment vouchers for the work;
 - h. A statement whether the work was competitively bid, and if so, a copy of all proposals submitted by the bidders.
3. *Release of Lien.* Upon payment of the cost after the notice of lien has been filed as provided herein, the lien shall be released by the City or person in whose name the lien has been filed, and the release shall be recorded of record in the same manner as recording the notice of lien.
 4. *Enforcement of Lien.* A priority lien pursuant to this Section is enforceable by the City, or entity or person who performs work on behalf of the City, only at the hearing for confirmation of the foreclosure sale of the abandoned residential property and is limited to a claim of interest in the proceeds of the sale. The priority lien is superior to all other liens and encumbrances, except tax liens.

(Ord. No. 110-0-03; Ord. No. 117-0-09; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-14)), 1-23-2012)

4-16-15. - SEVERABILITY.

In the event any section of this chapter or any part of any section of this chapter is declared to be unconstitutional, such decision shall in no way affect the operation of any other section or part thereof; the remainder of this chapter shall remain in full force and effect.

(Ord. No. 110-0-03; Ord. No. 8-0-12, (48-0-11(exh. A, § 4-16-15)), 1-23-2012)