

CITY OF BREWER, MAINE IN CITY COUNCIL ASSEMBLED

2019-C004

August 13, 2019

TITLE: VACANT PROPERTY REGISTRATION ORDINANCE

Filed August 5, 2019
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WHEREAS, vacant buildings remaining unoccupied for any significant period of time present blight concerns, attract criminal activity, constitute a fire hazard, and constitute a hazard to the public health, safety, and welfare of the citizens of Brewer due to inadequate maintenance or dilapidation; and

WHEREAS, vacant and dilapidated buildings pose significant and costly problems to the City, detract from the quality of life in the City, and are in impediment to redevelopment activities; and

WHEREAS, adequate protection of the public health, safety and welfare therefore requires the establishment and enforcement of the means to address the aforementioned conditions; and

WHEREAS, the City has established a Vacant Property Registration Ordinance that ensures vacant buildings will be identified, licensed and inspected to insure minimum safety standards are met.

NOW THEREFORE, the Municipality hereby enacts the following ordinance:

CHAPTER 49 - VACANT PROPERTY REGISTRATION ORDINANCE

SECTION 1. AUTHORITY.

This Ordinance is adopted pursuant to the City's home rule authority under 30-A M.R.S. § 3001.

SECTION 2. FINDINGS.

Buildings which remain vacant and unoccupied for any significant period of time present blight concerns, attract criminal activity, constitute a fire hazard, and constitute a hazard to the public health, safety, and welfare due to inadequate maintenance or dilapidation, is a nuisance or is dangerous to life or property, and causes neighboring properties to suffer from stagnant or declining property values. The use and maintenance of property in such condition and manner endangers the public health, safety, and welfare and constitutes an unreasonable use and conditions to the annoyance, discomfort, and repose of a considerable number of the public insecure in the use and enjoyment of their property, and thus constitutes a nuisance condition.

Vacant buildings also create and pose significant and costly problems for the City. These properties become a drain on the City budget and detract from the quality of life of the neighborhood and the City

as a whole. Vacant buildings are an impediment to redevelopment and rehabilitation of the specific areas in the City and the City overall.

Adequate protection of the public health, safety, and welfare therefore requires the establishment and enforcement of the means to address and abate the aforescribed conditions.

SECTION 3. PURPOSE.

The purpose of this ordinance is to protect the health, safety and welfare of the people of the City of Brewer by establishing a program to identify, license, inspect to minimum standards, and determine actions owners will take to return vacant buildings to suitable or proper use or occupancy, or securing or demolishing such vacant buildings. This article is intended to prevent or mitigate dangers to health, safety, and welfare, promote responsible management, provide a safe neighborhood for residents, safeguard property values, expedite building repairs, and provide for prompt contact with owners or managers by police, fire, and code enforcement when issues or emergencies develop.

SECTION 4. DEFINITIONS.

The following words and terms, when used in this ordinance, have the following meanings, unless the context clearly indicates otherwise.

“Owner”. Any person, agent, holder of an unrecorded contract for deed, a mortgagee or vendee in possession, a mortgagor or vendor in possession, assignee of rents, receiver, executor, trustee, lessee, other person, firm or corporation in control of the freehold of the premises or lessor state therein, or other legal entity having a legal or equitable interest in a vacant building, including but not limited to the beneficiary of a trust, and the holder of a life estate.

“Vacant Building”. A residential, commercial, or industrial building which is lacking habitual presence of natural persons who have a legal right to be on the premises, or at which substantially all lawful business operations or residential occupancy has ceased with the exception of garages or accessory buildings not intended for human occupancy.

For the purposes of this definition, lacking habitual presence of natural persons occurs when at least 50% of the building measured in terms of floor area lacks habitual presence of natural persons. In addition, for the purposes of this definition, substantially all lawful business operations or residential occupancy ceases when at least 50% of the building measured in terms of floor area lacks a lawful business operation or residential occupancy.

The term “vacant building” also includes any building in which more than one-half of the total exterior windows and doors are broken, boarded or not present or without functioning locks is to be deemed vacant regardless of habitual presence of natural persons who have a legal right to be on the premises, lawful business operations, or residential or any other occupancy.

The term “vacant building” also includes any building or portion of a building greater than 50% of the building’s floor area that is primarily used as storage of items not offered to the general public or that are not inventory for ongoing lawful business operations or for sale to lawful ongoing business operations. For the purposes of this definition, inventory is goods or materials intended for lawful business operations that must turnover in a periodic manner customary for the intended lawful business operation(s). In addition, for the purposes of this definition, by way of example and without limitation, a “vacant building” does not include self-storage or substantially similar businesses offering storage to the general public, or warehouses used as inventory for ongoing lawful business operations or for sale to lawful ongoing business operations.

Vacant building determinations shall be made by the Code Enforcement Officer, in consultation, as necessary, with other government officials.

SECTION 5. APPLICABILITY; LICENSE REQUIRED; RENEWAL; EXPIRATION; RENEWAL LICENSE; TRANSFERABILITY; EXEMPTIONS.

The provisions of this ordinance apply to all residential, commercial, or industrial vacant buildings located within the area bounded by; the east side of the Penobscot River, the west side of the Bucksport branch of the Pam Am railroad tracks and Interstate 395.

License Required. A vacant building license is required for any vacant buildings as defined in this ordinance. Any person carrying on without a vacant building license shall be deemed in violation of this ordinance.

Existing Vacant Buildings as of the Effective Date of this Ordinance [see below for Effective Date], _____, 2019. Within 90 days of the Effective Date of this ordinance _____, 2019, all existing vacant buildings shall apply for a vacant building license. Any person that fails to apply for a vacant building license by this deadline shall pay a penalty of \$750. This is in addition to the license application fee and penalties for non-compliance with this ordinance.

Vacant Buildings after the Effective Date of this Ordinance [see below for Effective Date] _____, 2019. After _____, 2019 the Effective Date of this ordinance, any building that becomes a vacant building in the area described above _____ District shall apply for a vacant building license. Any person that fails to apply for a vacant building license within 90 days of a building becoming vacant shall pay a penalty of \$750. This is in addition to the license application fee and penalties for non-compliance with this ordinance.

License Expiration. All licenses expire 12 months from the effective date of issuance.

Renewal License. Application for a renewal license shall be filed prior to the expiration date. A renewal license expires 12 months from the effective date of issuance.

License Non-Transferrable. A vacant building license may only be issued to the owner of a vacant building named on the approved license application. One license may be issued for a vacant building and shall be deemed to cover only such building under that single form of ownership. No transfer of a

license is allowed between owners or between buildings. Prior to any purchase, transfer, assignment, or acquisition of a vacant building, a new vacant building license shall be applied for and obtained. The license fee for any new license obtained by virtue of purchase, transfer, assignment, or acquisition of a vacant building shall be computed according to Section 7 of this Ordinance, in which the applicable license fee continues to escalate at two times the prior year fee up to a maximum of \$6,000 per year for each additional year the building continues as vacant notwithstanding any change in ownership, property transfers or numbers thereof, or issuance of a new license(s) by virtue of purchase, transfer, assignment, or acquisition.

Exemptions; Exemption Certificate. Any owner of a vacant building may request an exemption from the provisions of this ordinance by filing a written application with the Code Enforcement Officer who shall timely consider same and, if approved, issue an Exemption Certificate. A residential, commercial, or industrial building is exempt from the requirements of this ordinance if:

1. It is being substantively demolished, constructed, or altered pursuant to a valid building permit issued by the City.
2. It has suffered fire damage or damage caused by extreme weather conditions for a period of 90 days after the date of the fire or extreme weather event if the property owner submits a request for exemption in writing to the Code Enforcement Office. This request shall include the names and addresses of the owner or owners, and a statement of intent to repair and reoccupy the building in an expedient manner, or the intent to demolish the building.
3. It is for sale and listed with a licensed State of Maine realtor for a period of at least 12 months for commercial or industrial properties or a period of at least 6 months for residential properties, beginning from the start of vacancy, provided the sale price is at or below 110% of the fair market value of the property according to a certified appraiser in the State of Maine, or is offered for lease at a market rate. The owner or owner's representative submits proof to the Code Enforcement Office of such listing and for sale or lease status. If the vacant building is no longer listed with a licensed State of Maine realtor, then it does not qualify for an exemption certificate under this subsection. Any Exemption Certificate based on this sale/listing/lease exemption must be conditioned upon and be in compliance with the Secured Building/Property provisions stated below in Section 8.6.b.
4. It is a primary residence of members of the armed forces on active duty, it is a vacation or resort facility, or a residence of persons on extended vacations or alternative living arrangements with the intention to return to the property and live (e.g., "snowbirds"). Owners of vacant buildings qualifying under one of these are required to have the property maintained by a property manager and to provide the City with a valid emergency contact number for the owner and the property manager.

An Exemption Certificate is valid for 6 months from the effective date of issuance by the Code Enforcement Officer. Prior to expiration of an Exemption Certificate, an applicant must submit a renewal application to the Code Enforcement Office. A renewal application shall be processed and be subject to the same standards as a new application for exemption. Exemption Certificates are non-transferrable.

SECTION 6. LICENSE REVIEWING AUTHORITY.

The Code Enforcement Officer shall have the authority to issue all licenses and exemption certificates pursuant to this ordinance to applicants meeting the licensing or exemption certificate standards.

SECTION 7. LICENSE FEES.

A vacant building license may only be issued after an owner has paid the license fee. The fee is paid through the Code Enforcement Office. The license fee is \$750 for each 12-month license issued. This license fee escalates at two times the prior year fee for each additional year the building continues as vacant regardless of the owner or issuance of a new license (e.g., change of ownership), up to a maximum of \$6,000 per year.

For any vacant building that obtains an exemption certificate that expires, the fee to obtain a vacant building license will include the time period of the exemption certificate.

In the event the cost of all materials, staff time, and other expenses of the City is greater than the above license fee, then those costs shall become the license fee due and payable to obtain a license for the applicable 12-month period.

SECTION 8. LICENSE APPLICATION.

A license application shall be made to the Code Enforcement Office on a form furnished by the Brewer Code Enforcement Office for such purpose and shall include the following information:

1. Name, business or residence address, cell phone and primary telephone numbers, e-mail address of the owner or owners of the building.
2. Name, business or residence address, cell phone and primary telephone numbers, e-mail address of the individual designated by the owner or owners of the building as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding in connection with the enforcement of this article or code regarding the vacant building.
3. Name, business or residence address, twenty-four-hour-a-day cell and primary telephone numbers, e-mail address of the property manager responsible for management and maintenance of the building which shall be the primary contact for the City to schedule inspections.
4. The name of any bank/lender/lien holder with an interest in the property and its contact information, including the mailing address of the bank/lender/lien holder.

5. Street address of the building, parcel identification code or map and lot for the property on which the building sits.
6. Statement of intent, including the expected period of vacancy, the plan for care, maintenance and security of the property during the vacancy, code compliance, and a plan and timeline for lawful occupancy, rehabilitation, or removal or demolition of the building to commence (the “Vacant Building Plan”). The Vacant Building Plan shall be selected from and include the minimum requirements from one of the three following categories:
 - a. Demolition. If the vacant residential, commercial, or industrial building is to be demolished, the Vacant Building Plan shall include a proposed time frame for demolition which shall include a commencement date within 30 days of approval of the demolition time frame and shall not exceed 1 year in duration.
 - b. Secured Building/Property. If the vacant residential, commercial, or industrial building is to remain vacant, the Vacant Building Plan shall contain all of the following:
 - i. A plan for fire alarm and for protection as required by the Fire Department
 - ii. A plan of action to remedy any code, nuisance, or dangerous conditions
 - iii. A regular maintenance plan for property maintenance and to maintain compliance with all applicable City ordinances and codes.
 - iv. A lighting plan for the exterior of the building and property, adjacent walkways, parking, or loading areas, and nighttime illumination of areas and walkways of the building and property which may be vulnerable to vandalism and vagrancy as determined by the Police Department.
 - v. A regular maintenance plan for all exterior lighting and illumination fixtures.
 - vi. A plan for the maintenance of all structural openings, such as windows, doors, areaways, and other openings to avoid the necessity of boarding up. Windows, doors, areaways, and other openings that are located on the first floor and facing a street or the Riverfront shall not be papered, soaped, blacked out, or boarded up, and, for commercial or industrial buildings, to avoid the appearance of vacancy, a form of display shall be set up that shall be approved by the Fire Department.
 - c. Rehabilitation/Redevelopment. If the vacant residential, commercial, or industrial building is to be returned to lawful occupancy or use, the Vacant Building Plan shall include a rehabilitation/redevelopment time frame for the building and property. The rehabilitation time frame shall not exceed 12 months, unless extended by the City for good cause.
7. List of persons authorized to be present in the building, including a statement that any person not listed shall be considered trespassers.

If any contact information required in the application changes or becomes out-of-date, the owner must notify the Code Enforcement Office of the changes in writing within 30 days of such change. Failure to notify the Code Enforcement Office of changes is a violation of this article.

SECTION 9. STANDARDS AND CONDITIONS.

The following minimum standards and conditions shall be met for vacant buildings. Failure to comply with any of these standards and conditions shall be deemed a violation of this ordinance.

1. The licensee shall provide complete application information and have paid the required license fee and required renewal license fees.
2. The building shall be in compliance with all applicable codes and ordinances of the City of Brewer.
3. A vacant building shall be free of any property defects as defined in 30-A M.R.S.A § 3106-B.
4. A vacant building shall not be a nuisance or dangerous building pursuant to 17 M.R.S.A § 2851.
5. No vacant building shall be occupied or illegally occupied in violation of this Code.
6. A vacant building shall be protected from deterioration and property defects.
7. A vacant building shall display a hazardous identification placard that is readily visible from normal access points of the building.
8. A vacant building shall abide by and implement the applicable Vacant Building Plan.

SECTION 10. INSPECTIONS FOR LICENSE APPLICATIONS.

At the time of application, the owner of a vacant building shall arrange for an inspection of the property with the Code Enforcement Office. The purpose of the inspection is to determine and ensure compliance with this ordinance and all applicable standards and conditions, and shall include an inspection of the property including, but not limited to, an inspection of the premises, building exterior, and building interior areas including the basement. The Code Enforcement Office may bring on the inspection such other government officials as it deems prudent to ensure compliance with standards and the safety of the building and the Code Enforcement Office, including but not limited to Police and Fire Officials. A government official's entry to property under this section is not a trespass.

SECTION 11. AUTHORIZED ENTRY FOR INSPECTIONS, GENERALLY.

To safeguard the health, safety, and welfare of the public, Code Enforcement Officers are authorized to enter any property at reasonable hours or enter any building with the consent of the owner or agent to inspect the property or building for compliance. Code Enforcement Officers may also be accompanied by other government officials he or she deems prudent for the purpose of administering this ordinance. A government official's entry onto property under this section is not a trespass.

If the Code Enforcement Officer has reason to believe that an emergency or imminent danger exists tending to create an immediate danger to the public's health, safety, and welfare, Code, Police, Fire, and

other government officials have the authority to enter and inspect the vacant building and premises upon which it stands without notification or warrant being required.

SECTION 12. VIOLATIONS AND PENALTIES.

In addition to any other available remedies, including but not limited to the City's authority to enforce land use laws and ordinances pursuant to 30-A M.R.S. § 4452, any person who violates any provision of this ordinance or the terms or conditions of any license shall be subject to civil penalties. The minimum penalty for a specific violation is \$100, and the maximum penalty is \$2,500. Monetary penalties may be assessed on a per-day basis and are civil penalties.

The Code Enforcement Officer is authorized to immediately and temporarily suspend, revoke, or take other enforcement actions regarding a vacant building license to an entire property or portion thereof when the Code Enforcement Officer has been denied entry to inspect the property, the licensee has not corrected violations by a specified date, or when the Code Enforcement Officer determines the property is in non-compliance with any provisions of this ordinance.

SECTION 13. ADMINISTRATIVE APPEALS.

Any decision by the Code Enforcement Officer may be appealed within 30 days of its issuance to the Board of Appeals. Such appeals shall be de novo and the proceedings shall be consistent with 30-A M.R.S. § 2691 and applicable City ordinance provisions regarding proceedings before the Board of Appeals.

SECTION 14. SEVERABILITY.

If any clause, sentence, paragraph, section, article, or part of this article or of any ordinance included in this Code or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect impair or invalidate the remainder therefor but shall be confined in its operation to the clause, sentence, paragraph, section, article, or part therefore directly involved in the controversy in which such judgement shall have been rendered.

Effective Date:

Statement of Fact

The City of Brewer has determined that vacant buildings remaining unoccupied for significant amounts of time present a risk to the health and safety of the citizens of Brewer. The City has established a Vacant Property Registration Ordinance that ensures vacant properties will be identified, licensed and inspected to insure minimum safety standards are met.