

ORDINANCE NO. 2022-05

**BOROUGH OF ENGLEWOOD CLIFFS
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING CHAPTER 10 TITLED
“PROPERTY MAINTENANCE CODE” AND ESTABLISHING
SECTION TITLED “MAINTENANCE OF VACANT AND
ABANDONED RESIDENTIAL PROPERTIES”**

WHEREAS, the Borough of Englewood Cliffs regulates the maintenance of residential properties within the Borough by and through Chapter 10 of its Ordinances, titled “Property Maintenance Code”; and

WHEREAS, in P.L. 2014, c. 35, the Legislature and Governor enacted a law “concerning the maintenance of certain residential properties, supplementing chapter 48 of Title 40 of the revised statutes . . .” (the “Act”); and

WHEREAS, pursuant to the Act, N.J.S.A. 40:48-2.12(s)(1) authorizes the Englewood Cliffs Borough Council to “adopt ordinances to regulate the care, maintenance, security, and upkeep of the exterior of vacant and abandoned residential properties on which a summons and complaint in an action to foreclose have been filed”; and

WHEREAS, pursuant to the Act, N.J.S.A. 40:48-2.12(s)(1)(b) authorizes the Englewood Cliffs Borough Council to require out-of-State creditors to “appoint[] an in-State representative or agent to act for the foreclosing creditor”; and

WHEREAS, pursuant to the Act, N.J.S.A. 40:48-2.12(s)(1)(c) authorizes the Borough to impose monetary fines and penalties for each violation of provisions adopted in ordinance pursuant to the Act; and

WHEREAS, the Englewood Cliffs Borough Council finds that it is in the best interest to implement the provisions of the Act to encourage the proper maintenance of vacant and abandoned residential properties in the Borough.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Englewood Cliffs in the County of Bergen, State of New Jersey that the Ordinances of the Borough of Englewood Cliffs be and hereby are amended as follows:

SECTION 1. The following new sections are adopted:

10-11 MAINTENANCE OF VACANT AND ABANDONED RESIDENTIAL PROPERTIES

10-11.1 Definitions

A. “Creditor” shall mean, consistent with section 3 of P.L. 2008, c. 86, a State chartered bank, savings bank, savings and loan association or any credit union, or any person required to be licensed under the provisions of the “New Jersey Residential Mortgage Lending Act,” and any entity acting on behalf of the Creditor named in the debt obligation, including but not limited to, mortgage loan servicers.

B: “Public officer” shall mean the Code Enforcement Officer or his/her designee.

C: “Vacant and Abandoned” residential property shall mean, consistent with section 1 of P.L. 2010, c.70 (C.2A:50-73), residential real estate for which a notice of violation has been issued pursuant to Section 10-11 of this Chapter and subsection b. of section 1 of P.L. 2014, c.35 (C.40:48-2.12s). Where a notice of violation has not been issued pursuant to Section 11-3.3 of this Chapter and subsection b. of section 1 of P.L. 2014, c.35 (C.40:48-2.12s), residential property shall be deemed “Vacant and Abandoned” where a mortgaged property is not occupied by a mortgagor or tenant as evidenced by a lease agreement entered into prior to the service of a notice of intention to commence foreclosure according to section 4 of the “Fair Foreclosure Act,” P.L. 1995, c.244 (C.2A:50-56) and at least two of the following conditions exist:

- (1) overgrown or neglected vegetation;
- (2) the accumulation of newspapers, circulars, flyers or mail on the property;
- (3) disconnected gas, electric, or water utility services to the property;
- (4) the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (5) the accumulation of junk, litter, trash or debris on the property;
- (6) the absence of window treatments such as blinds, curtains or shutters;
- (7) the absence of furnishings and personal items;
- (8) statements of neighbors, delivery persons, or government employees indicating that the residence is vacant and abandoned;
- (9) windows or entrances to the property that are boarded up or closed off or multiple window panes that are damaged, broken and unrepaired;
- (10) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
- (11) a risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
- (12) an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
- (13) the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;
- (14) a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property; and

- (15) any other reasonable indicia of abandonment.

10-11.2 Registration of Vacant and Abandoned Properties

A. A Creditor filing a summons and complaint in an action to foreclose on a Vacant and Abandoned property, or a Creditor who has previously filed a summons and complaint to foreclose on a residential property which subsequently becomes Vacant and Abandoned, shall within thirty (30) calendar days after the building becomes Vacant and Abandoned or within thirty (30) calendar days after assuming ownership of the Vacant and Abandoned property, whichever is later; or within ten (10) calendar days of receipt of notice from the Borough, and annually thereafter, file a registration statement for such Vacant and Abandoned property with the municipal clerk on forms provided by the Borough for such purposes. Any failure to receive notice from the Borough shall not constitute grounds for failing to register the Vacant and Abandoned property.

B. Each Vacant and Abandoned property having a separate block and lot number as designated in the official tax maps of the Borough shall be registered separately.

C. The registration statement shall include the name, street address, telephone number, and email address (if applicable) of a person twenty-one (21) years or older, designated by the Creditor as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such Creditor in connection with the enforcement of any applicable code.

D. The registration statement shall include the name, street address, telephone number, and email address (if applicable) of the firm and the actual name(s) of the firm's individual principal(s) responsible for maintaining the Abandoned and Vacant property. The individual or representative of the firm responsible for maintaining the Abandoned and Vacant property shall be available by telephone or in person on a twenty-four hour per day, seven-day per week basis. The two entities may be the same or different persons. Both entities shown on the statement must maintain offices in the State of New Jersey or reside within the State of New Jersey.

E. The registration shall remain valid for one year from the date of registration except for the initial registration which shall be valid through December 31st of the year in which it was filed. The Creditor shall be required to renew the registration annually as long as the building remains Vacant and Abandoned and shall pay a registration or renewal fee in the amount prescribed in Paragraph I. of this Section for each Vacant and Abandoned property registered.

F. The annual renewal shall be completed by January 1st each year. The initial registration fee shall be prorated for registration statements received less than ten (10) months prior to that date.

G. The Creditor shall notify the municipal clerk within thirty (30) calendar days of any change in the registration information by filing an amended registration statement on a form provided by the municipal clerk for such purpose.

H. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the Borough against the Creditor.

I. Fee Schedule. The initial registration fee for each Vacant and Abandoned property under the provisions of this Section shall be five hundred (\$500.00) dollars. The fee for the first annual renewal shall be one thousand five hundred (\$1,500.00) dollars and the fee for the second annual renewal shall be three thousand (\$3,000.00) dollars. The fee for any subsequent annual renewal beyond the second renewal shall be five thousand (\$5,000.00) dollars.

10-11.3 Creditor Responsibility for Vacant and Abandoned Properties.

A. A Creditor filing a summons and complaint in an action to foreclose on a residential property within the Borough shall be immediately responsible for the care, maintenance, security, and upkeep of the exterior of the property, after the property becomes Vacant and Abandoned, as defined in this Chapter. This responsibility shall, include, but not be limited to the following:

1. Posting a sign affixed to the building indicating the name, address, and telephone number of the Creditor, consistent with Section 10-11.1(A), the Creditor's in-state authorized agent for the purpose of service of process consistent with Section 10-11.2(C), and the Creditor's agent responsible for the day-to-day supervision and management of the building, consistent with Section 10-11.2(D). The sign shall be in such a location so as to be legible from the nearest public street or sidewalk, whichever is nearer, but shall be no smaller than eight inches by ten inches.

2. Enclosing and securing the building against unauthorized entry as provided in the applicable provisions of the Borough Code or as set forth in the rules and regulations supplementing those codes.

3. Securing the building from unauthorized entry and maintain the sign until the building is again legally occupied or demolished or until repair or rehabilitation of the building is complete.

4. Ensuring that the exterior grounds of the structure, including yards, sidewalks, walkways, rights-of-way, alleys, retaining walls, attached or unattached accessory structures, and driveways, are well-maintained and free from trash, debris, loose litter, and grass and weed growth, including provision for regular grass cutting as required by Borough code.

5. Providing for winterization of the property by the cessation of water service to the property and the draining of water lines, other than buildings with a fire sprinkler system.

6. Providing for the cessation of electric or gas utility services to the property, other than buildings with a fire safety system.

7. Providing for Borough access to the property to conduct exterior and interior inspections of the building to determine compliance with municipal codes, upon reasonable notice to the property owner or designated agent.

B. Where a Creditor is located out-of-State, the Creditor shall be responsible for appointing an in-State representative or agent to act on the Creditor's behalf for the purpose of satisfying the requirements of Paragraphs C and D of Section 10-11.2. Notice of said representative or agent shall be provided to the Borough clerk in a manner that is consistent with subsection a. of section 17 of P.L. 2008, c.127 (C.46:10B-51a) (the "Save New Jersey Homes Act of 2008"), and shall further include the full name and contact information of the in-State representative or agent.

10-11.4 Notice.

A. Any public officer designated by the Borough or authorized municipal official responsible for the administration of any property maintenance or public nuisance code shall be authorized to issue a notice to a Creditor that has filed a summons and complaint in an action to foreclose on a residential property within the Town, if an Enforcement Officer pursuant to Section 10-11.5 determines that the Creditor has violated this Chapter by failing to provide for the care, maintenance, security, and upkeep of the exterior of the property, consistent with Section 10-11.3(A). Where a Creditor is an out-of-State Creditor, the notice shall be issued to the representative or agent that has been identified by the Creditor pursuant to Section 10-11.3(B) of this Chapter and the Save New Jersey Homes Act of 2008.

B. The notice referenced in Paragraph A of this Section shall require the Creditor to correct the violation(s) within 30 days of receipt of the notice, or within 10 days of receipt of the notice if the violation presents an imminent threat to public health and safety.

C. The issuance of a notice pursuant to Paragraph A of this Section shall constitute proof that a residential property is "Vacant and Abandoned" for the purposes of this Chapter.

10-11.5 Enforcement Officers.

The duty of administering and enforcing the provisions of this Chapter is conferred upon the municipal clerk, construction official, zoning officer, Borough Police, and any other duly appointed representatives.

10-11.6 Violations and Penalties.

A. A Creditor subject to this Chapter that is found by the municipal court of the Borough, or by any other court of competent jurisdiction, to be in violation of the requirement to correct a care, maintenance, security, or upkeep violation cited in a notice issued pursuant to this Chapter shall be subject to a fine of \$1,500 for each day of the violation. Any fines imposed pursuant to this subsection shall commence 31 days following the Creditor's receipt of the notice, except where the violation is deemed to present an imminent risk to the public health and safety, in which case any fines shall commence 11 days following receipt of the notice.

B. An out-of-state Creditor subject to this Chapter that is found by the municipal court of the Town, or by any other court of competent jurisdiction, to be in violation of the requirement to appoint an in-State representative or agent shall be subject to a fine of \$2,500 for each day of the violation. Any fines imposed on an out-of-state Creditor for the failure to appoint an in-State representative or agent shall commence on the day after the 10 day period set forth in paragraph (1) of subsection a. of section 17 of P.L. 2008, c.127 (C.46:10B-51) for providing notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.

C. A Creditor subject to this Section that is found by the municipal court of the Borough, or by any other court of competent jurisdiction, to be in violation of the requirement to register a Vacant and Abandoned property pursuant to Section 10-11.2 shall be subject to a fine not exceeding two thousand (\$2,000.00) dollars. Any fines imposed on a Creditor under this Paragraph shall commence 11 days following receipt of notice from the Borough pursuant to Section 10-11.2(A).

D: No less than 20 percent of any money collected by the Town pursuant to this Section shall be utilized by the municipality for municipal code enforcement purposes, pursuant to N.J.S.A. 40:48-2.12(s)(1)(d).

SECTION 2. Severability.

If any section, subsection or paragraph of this ordinance be declared unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such chapter, section subchapter or paragraph shall to the extent that is not held unconstitutional, invalid or inoperative remain in full force and effect and shall not affect the remainder of this ordinance.

SECTION 3. Repealer.

All ordinances and resolutions, and parts of ordinances and resolutions which are inconsistent with provisions of this ordinance shall be, and are hereby, repealed to the extent of any such inconsistency.

SECTION 4. Effective Date.

This ordinance shall take effect after final adoption and approval pursuant to law. For any property that meets the definition of a Vacant and Abandoned home pursuant to this Chapter on the Effective Date of this ordinance, the requirements of this Ordinance shall become effective on the sixtieth (60th) day following the Effective Date of same.

BE IT FURTHER ORDAINED as follows:

a. Within five (5) days (Sundays excepted) of adoption on second reading, this Ordinance shall be presented to the Mayor for his signature by the Acting Borough Administrator;

b. Within ten (10) days (Sundays excepted) of receipt of this Ordinance, the Mayor shall either approve this Ordinance by affixing his signature hereto or shall return it, unsigned, together with a written statement of his veto and objections to the Ordinance as a whole or any parts thereof;

c. The return of the Ordinance and written objections shall be made by the Mayor and given to the Acting Borough Administrator, who shall forthwith provide same the Borough Council;

d. This Ordinance shall not take effect without the Mayor's approval, unless the Mayor fails to return the Ordinance to the Borough Council as set forth above, or unless, following the return of the Ordinance with the Mayor's veto and objections, the Borough Council shall, by a vote of two-thirds of the members of the Borough Council, resolve to override the Mayor's veto.

e. In the absence of a Mayoral veto or an override of the Mayoral veto, the Ordinance shall take effect pursuant to the above and after publication.

Introduced: April 27, 2022

Adopted: June 8, 2022