

City of Fall River, *In City Council*

BE IT ORDAINED by the City Council of the City of Fall River, as follows:

That the Code of the City of Fall River, Massachusetts, 2018, be amended as follows:

Section 1.

That Chapter 10 of the Code of the City of Fall River, Massachusetts, 2018, which chapter relates to Buildings and building regulations, be amended by inserting a new Article VII, which relates to Property maintenance as follows:

ARTICLE VII - Property Maintenance

§ 10-301. Findings and Purpose

Vacant, foreclosing, and improperly maintained properties can have a tremendous negative impact upon the neighborhoods where they are located, and they often present a danger to the public. This property maintenance ordinance attempts to protect the health, safety, welfare of the public and the public safety personnel who inspect or enter such properties.

§ 10-302. Definitions.

When used in this Property Maintenance Article, the following terms and phrases shall have the following meanings:

BUILDING

A fixed construction with walls, foundation, and a roof, including, but not limited to, a house, factory, or garage.

BUILDING MATERIALS

Lumber, bricks, concrete, cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, nails, screws, steel, or any other material commonly used in the construction of any building or structure.

CITY

City of Fall River

CONTACT INFORMATION

Includes the name, address, e-mail address, and telephone number.

CONTROL

The ability to regulate, restrain, or govern property or conduct that occurs on a property.

DAYS

Consecutive calendar days.

DILAPIDATED

A condition of decay or partial ruin by reason of neglect, misuse, or deterioration which includes, but is not limited to, a building with ineffective exterior waterproofing. Superficial conditions such as peeling paint are not proof of a dilapidated property.

FIRE CHIEF

The Fire Chief is the head of the Fall River Fire Department and is responsible for the management and operation of said department.

FORECLOSING

The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

INITIATION OF THE FORECLOSURE PROCESS

Includes taking possession of a residential property pursuant to MGL c. 244, § 1; delivering the mortgagee's notice of intention to foreclose to the borrower pursuant to MGL c. 244, § 17B, or commencing a foreclosure action on a property in either the Land Court or the Bristol County Superior Court.

INSPECTIONAL SERVICES

An employee or designee of the City's Inspectional Services Division, as identified in §§ 2-802 through 2-806 of the Code of the City of Fall River.

INSPECTOR OF BUILDINGS

The Director of the City of Fall River's Inspectional Services Division.

OWNER

Every person, entity, service company, property manager, or real estate broker who alone, or severally with others:

1. Has legal or equitable title to any dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a rooming house or mobile home park; or
2. Has care, charge, or control of any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a rooming house or mobile home park, in any capacity, including but not limited to as agent, executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the holder of legal title; or
3. Is a mortgagee in possession of any such property; or
4. Is an agent, trustee, or other person appointed by the courts and vested with possession or control of such property; or
5. Is an officer or trustee of the association of unit owners of a condominium; each such person is bound to comply with the provisions of these minimum standards as if he were the owner; however, this section shall not apply to a condominium association created pursuant to MGL c. 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association; or
6. Is a trustee who holds, owns, or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process.

PREMISES

Any building, lot, parcel, dwelling, rental unit, real estate or land, or portion thereof, including property used as a residential or commercial property.

PROPERTY

Any real, residential property, or portion thereof, located in the City of Fall River, including building or structures situated thereon, including, but not limited to, property owned or controlled by the Fall River Redevelopment Authority, the Fall River Housing Authority, and the Office of Community Development. As used in this Article only, "property" does not include property owned by the City of Fall River or any of its governmental entities.

RESIDENTIAL PROPERTY

Any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

RESPONSIBLE PARTY

Any person(s) with control over the property, including a renter, property owner, or any person or entity that is developing, building, or operating a business on the property.

STRUCTURE

A building, fence, fire escape, railing, tower, sidewalk, stairway, playset, or any other item, fully built or under construction, that is typically fastened, anchored, or attached to a building, foundation, or the ground.

VACANT

Any property not legally occupied. This definition shall not include properties that have been placed in receivership pursuant to MGL c. § 111, 127I or properties with valid building or other repair permits pursuant to the Massachusetts Building Code.

Division 1**Registration and Maintenance of Vacant and Foreclosing Residential Properties****§ 10-303. Owner Shall Register and Maintain Vacant and/or Foreclosing Property**

Vacant or foreclosing properties generally pose an increased risk to the health, safety, and welfare of the public and the officials who monitor and inspect these properties. As a result, an owner must comply with the City's registration and maintenance requirements.

§ 10-304. Registration requirements.

- A. Any owner of a vacant or foreclosing residential property shall, within thirty (30) days of the property becoming vacant or within seven (7) days of the initiation of the foreclosure process, register the property with the City by completing each of the following:
 1. Provide the Inspector of Buildings and the Fire Chief with contact information for the:
 - a. Owner or person in control of the property;
 - b. Person(s) or property management company responsible for maintenance of the property;
 - c. Person to be contacted in case of emergency; and

- d. If none of the owners are located within the Commonwealth of Massachusetts, then the registration shall also include contact information for a resident of Massachusetts who is authorized to accept service of process and other notices on behalf of the owners.
2. Provide the Inspector of Buildings and the Fire Chief with written notification of the status of such property, including in such notice:
 - a. The location of the property;
 - b. The length of time the building has been vacant;
 - c. The estimated time the building will remain vacant; and
 - d. The nature of the contents in the building.
 - B. Once the property is sold, transferred, or no longer vacant, the owner of the previously vacant or foreclosing property shall, within seven (7) days, provide the Inspector of Buildings and the Fire Chief with written notice of the change in the status of the property.
 - C. Registration fees shall be in accordance with § 10-306 below.

§ 10-305. Maintenance Requirements

The owner of any vacant and/or foreclosing residential property must comply with each of the following maintenance requirements:

- A. Maintain the property in accordance with the Massachusetts State Sanitary Code, the Massachusetts State Building Code, and all City ordinances.
- B. Keep the property free of trash, debris, overgrowth, and pools of stagnant water.
- C. Remove all hazardous material from the property to the satisfaction of the Fire Chief.
- D. Secure all windows and door openings sufficient to prevent unauthorized entry or, alternatively, provide twenty-four hour on-site security personnel on the property.
- E. Keep the property sufficiently heated to prevent water pipes from freezing or, in the alternative, drain all water from the plumbing between October 1st and April 30th of each calendar year.
- F. Post "No Trespassing" signs on the property.
- G. Maintain liability insurance on the property and furnish the Inspector of Buildings with a copy of the certificate of insurance.
- H. Provide a cash bond, acceptable to the Inspector of Buildings, in the sum of not less than ten thousand dollars (\$10,000), to ensure compliance with this Property Maintenance ordinance. The owner shall be liable to the City for all costs incurred due to the owner's failure to comply with this ordinance. The City may seek reimbursement for costs incurred by drawing down upon this bond and/or by establishing a lien on the property for the balance due, to be collected in accordance with Chapter 59 of the Massachusetts General Laws (MGL c. 59).

§ 10-306. Registration fees; Violations and penalties.

- A. Registration fees are set forth in Chapter A110-3, Fee Schedule, of the Code of the City of Fall River.
- B. All property registrations are valid for one fiscal year. Subsequent annual registration and fees are due prior to the expiration of the previous registration, even if Inspectional Services fails to send a billing statement as a reminder to the owner.
- C. An owner who fails to comply with the registration requirements of this ordinance or who fails to timely pay the registration fee is deemed to be in violation of this ordinance and shall be subject to the general penalty set forth in § 1-15 of the Code of the City of Fall River or, in the sole discretion of Inspectional Services, subject to the noncriminal disposition procedures set forth in §§ 2-1021 – 1029 of the City Code. Any assessment or fine resulting from a violation of this ordinance shall be subject to a lien on the property, to be collected in accordance with Chapter 59 of the Massachusetts General Laws (MGL c. 59).

§ 10-307. Appeal.

- A. Appeal of fee.
Any owner assessed a registration fee or fine under this ordinance shall have the right to appeal the imposition of such fee or fine to Inspectional Services by filing a written appeal request no later than fifteen (15) days after mailing of the billing statement. The appeal request shall be accompanied by a nonrefundable appeal fee as set forth in Chapter A110-3, Fee Schedule, of the Code of the City of Fall River. The owner shall have the burden of proof on appeal. Payment of the registration fee shall be stayed pending the outcome of a properly filed appeal. If the decision is adverse to the owner, payment shall be due within ten (10) days of the decision of Inspectional Services. The final decision of Inspectional Services shall be in writing and can be mailed, e-mailed, or hand-delivered to the owner.
- B. Appeal of final decision of Inspectional Services.
Any person aggrieved by a final decision of Inspectional Services under this ordinance may appeal to the district court, housing court, or other court of competent jurisdiction pursuant to MGL c. 40, § 21D and shall be entitled to a de novo hearing. The aggrieved person shall file the appeal within ten (10) days after receiving notice of the decision from Inspectional Services.

§ 10-308. Enforcement authority.

Inspectional Services has enforcement authority pursuant to G.L. c. 143 § 3A and §§ 2-802 – 806 of the Code of the City of Fall River and has authority to promulgate rules and regulations necessary to implement and enforce this ordinance. Inspectional Services is authorized to inspect properties to verify compliance with the State Building Code and the provisions this Article, to issue citations for any violations found therein, and to take any action necessary to ensure the health, safety, and welfare of the public and public safety officers.

§ 10-309. Conflicts with other rules and regulations.

The provisions of this Article are additional to all other applicable ordinances, rules, regulations, or laws of the Commonwealth. If any provision of this ordinance imposes a greater restriction or obligation than those imposed by any other law, regulation, rule, ordinance, bylaw, order or policy, then the provisions of this ordinance shall control.

§ 10-310. Severability.

If any provision of this Article is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

§ 10-311. Implementation

The provisions of this Article are immediately effective, but no monetary fine shall be imposed until thirty (30) days after passage.

§ 10-312. Notice

As a courtesy, a copy of this Article is to be mailed to all registered owners of residential property located in the City. An alleged failure to receive notice shall not be a defense and shall not have any effect whatsoever on the City's ability to enforce this ordinance.

§§ 10-313 through 10-319. (Reserved)

Division 2

Blighted Properties

§ 10-320. Definitions

BLIGHTED PROPERTY

Any building, structure, or parcel of land with any the following conditions:

1. Has become dilapidated as documented by Inspectional Services;
2. Has become a fire hazard as determined by the Fire Department; or
3. Poses a serious threat to the safety, health, or general welfare of the public as documented by Inspectional Services and/or the Department of Health and Human Services.

§ 10-321. Prohibition of Blighted Property

It shall be a violation of this ordinance to own, maintain, or create a blighted property.

§ 10-322. Investigation

Any member of the Fire Department, Inspectional Services, or the Department of Health and Human Services is authorized to investigate the existence of a blighted property and, if appropriate, to issue a Violation Notice and an Order to Take Corrective Action.

§ 10-323. Violation Notice; Service

If a violation of this blighted property ordinance is found to exist, the responsible party shall be served with a Violation Notice identifying the basis for the violation and an Order to Take Corrective Action, which shall provide the responsible party with a description of the action needed to bring the property into compliance. Service shall be valid if made in-person, via certified mail to the property owner of record, or affixed to the front door of the property in compliance with G.L. c. 40U, Section 9 if the responsible party is residing at the subject property.

§ 10-324. Order to Take Corrective Action

The Order to Take Corrective Action shall provide the owner with a description of the action needed to bring the property into compliance. The owner has thirty (30) days in which to comply with the Order to Take Corrective Action unless the issuing department has agreed, in writing, to additional time.

If the owner fails to take the required corrective action specified in the Order to Take Corrective Action and, in the exclusive judgment of the City, a failure to take corrective action would likely endanger the health, safety, or welfare of the public, then the City may undertake corrective action. All costs associated with the corrective action, including reasonable attorney's fees, shall constitute a debt in favor of the City and against the owner of the repaired structure.

§ 10-325. Penalties

An owner who fails to bring the blighted property into compliance within thirty (30) days shall be subject to the general penalty set forth in § 1-15 of the Code of the City of Fall River or the noncriminal procedure set forth in §§ 2-1021 through 2-1025 of the Code.

§ 10-326. Procedure for Demolition

Inspectional Services or the Department of Health and Human Services determines that the blighted property is beyond repair, they may issue an order that the building or structure be demolished. The owner has sixty (60) days to comply with the order to demolish the building or structure. If the owner fails to comply with the order to demolish within sixty (60) days and if, in the judgment of Inspectional Services or the Department of Health and Human Services, the condition of the blighted property constitutes an imminent danger to the health, safety, or welfare of the general public, then the City may demolish the building or structure. All costs associated with the demolition, including attorney's fees, shall constitute a debt in favor of the City and against the owner of the blighted property.

§ 10-327. Miscellaneous

- A. Each violation of any provision of this ordinance shall be considered a separate offense.
- B. Each day a violation continues shall constitute a separate offense.
- C. Failure to pay any fine arising from enforcement of this ordinance shall constitute a debt in favor of the City of Fall River and the City is authorized to place a lien on the property if the debt is not paid within sixty (60) days.
- D. Nothing in this section is intended to preclude the City from instituting a civil or criminal judicial action, including a demand for injunctive relief, to enforce the provisions of this ordinance.

§§ 10-328 through 10-329. (Reserved)

Division 3
Nuisance Properties

§ 10-330. Definitions

CRIMINAL NUISANCE PROPERTY

Any building, structure, or parcel of land where three (3) or more instances of criminal conduct have occurred within a six (6) month period. The criminal conduct shall not include instances where the responsible party is the victim and had no control over the criminal conduct.

NUISANCE PROPERTY

Any building, structure, or parcel of land where any of the following conditions exist:

1. The Police Department has made a written determination that the property has become a criminal nuisance property;
2. The Fire Department has made a written determination that the property has become a fire hazard;
3. Inspectional Services has made a written determination that the property has become dilapidated; or
4. Inspectional Services or the Department of Health and Human Services has made a written determination that the property poses a serious threat to the health, safety, or general welfare of the public. An example of a serious threat to the public would include, but is not limited to, any of the following:
 - A. A vacant building with window or door openings that are not reasonably locked or secured to prevent unauthorized entry;
 - B. The property contains overgrown vegetation that may harbor rats or other vermin or may conceal a pool of stagnant water, provided that the failure to mow a lawn does not, by itself, constitute a nuisance;
 - C. The property contains trash, debris, or other material that is likely to attract rats or other vermin;
 - D. The property contains dead, decayed, or diseased trees or other vegetation;
 - E. The property contains parts or materials that are likely to result in contamination of the soil due to exposure to the elements, including but not limited to, unregistered motor vehicles; or
 - F. The property is being used to store landscaping or building materials and the city has not issued a valid building permit for the premises within the last twelve (12) months.

§ 10-331. Prohibition of Nuisance Property

It shall be a violation of this ordinance to own, maintain, or create a nuisance property. The fact that a particular property, structure, or use is permitted by zoning regulations does not create an exemption from application of this ordinance.

§ 10-332. Investigation

Any member of the Police Department, Fire Department, Inspectional Services, or the Department of Health and Human Services is authorized to investigate a property for a potential nuisance violation and, if appropriate, to issue a Violation Notice and an Order to Take Corrective Action.

§ 10-333. Violation Notice; Service

If a violation of this nuisance property ordinance is found to exist, the responsible party shall be served with a Violation Notice identifying the basis for the violation and, when necessary, an Order to Take Corrective Action, which shall provide the responsible party with a description of the action needed to bring the property into compliance. Service shall be valid if made in-person, via certified mail to the property owner of record, or affixed to the front door of the property in compliance with G.L. c. 40U, Section 9.

§ 10-334. Order to Take Corrective Action

If an Order to Take Corrective Action is issued, the Order shall provide the responsible party with a written description of the action needed to bring the property into compliance. The responsible party has ten (10) days in which to bring the nuisance property into compliance unless the issuing department has agreed, in writing, to additional time. Failure to bring the nuisance property into compliance within the deadline for doing so may result in additional fines or penalties, as set forth in this ordinance.

If the property owner is the responsible party and has failed to timely comply with the Order to Take Corrective Action and if, in the exclusive judgment of the issuing department, the continued failure to take corrective action would constitute an imminent danger to the health, safety, or welfare of the general public, then the City may take corrective action. All costs associated with the corrective action, including attorney's fees, shall constitute a debt in favor of the City and against the owner of the nuisance property.

§ 10-335. Penalties

The responsible party shall be subject to the general penalty set forth in § 1-15 of the Code of the City of Fall River, the noncriminal procedure set forth in §§ 2-1021 through 2-1025 of the Code, and/or the criminal penalties imposed by G.L. c. 143, Section 6.

§ 10-336. Miscellaneous

- A. Each violation of any provision of this nuisance ordinance shall be considered a separate offense.
- B. Each day a nuisance violation continues shall constitute a separate offense.
- C. Failure of an owner to pay any fine arising from enforcement of this nuisance ordinance shall constitute a debt in favor of the City of Fall River and the City is authorized to place a lien on the property if the debt is not paid within sixty (60) days.
- D. Nothing in this section is intended to preclude the City from instituting a civil or criminal judicial action, including a demand for injunctive relief, to enforce the provisions of this nuisance ordinance.

§§ 10-337 through 10-339. (Reserved)

Section 2.

That Chapter 10 of the Code of the City of Fall River, Massachusetts, 2018, which chapter relates to Buildings and building regulations, be amended by striking out Article III, Building Standards, Division 3, Vacant Building Registration and Fee in its entirety.

Section 3.

That Chapter 42 of the Code of the City of Fall River, Massachusetts, 2018, which chapter relates to Housing, be amended by striking out §42-1, Maintenance of Vacant and Foreclosing Residential Properties, in its entirety and inserting in place thereof the following:

§42-1. through §42-30. (Reserved)

Section 4.

That Chapter 46 of the Code of the City of Fall River, Massachusetts, 2018, which chapter relates to Offenses, be amended by striking out §46-16, Chronic Nuisance Properties, in its entirety and inserting in place thereof the following:

§46-16. (Reserved)

Section 5.

That in Section A110-3, Chapter 10, Buildings and Building Regulations., Article III, Division 3, of Appendix A-Fee Schedule of the Code of the City of Fall River, Massachusetts, 2018, which Section relates to Vacant Building Registration and Fees, be re-numbered in proper numerical order, as follows:

- A. By striking out "§10-97" and inserting in place thereof "§10-306"
- B. By striking out "§10-99" and inserting in place thereof "§10-307"

In City Council, September 10, 2024
Passed to be ordained, as amended.

Approved, September 11, 2024
Paul E. Coogan, Mayor

A true copy. Attest:



City Clerk