

**Ordinance No. 531**

**An Ordinance to amend Sections 141-6 and 141-19 the City Code Relating to Vacant and Dangerous Buildings**

**WHEREAS**, the City of New Castle recognizes significant civic and economic value in maintaining the real estate within the City, for the benefit of its residents and visitors; and

**WHEREAS**, the City has a vested interest in protecting the public health, safety, and welfare by way of creating standards for buildings and structure within the City; and

**WHEREAS**, vacant and boarded properties pose a unique challenge for the City, its residents, and other parties with respect to safety, security, maintenance of surrounding property values and quality of life issues; and

**WHEREAS**, the City intends to monitor and control vacant and boarded buildings, and to mitigate the effects of the condition of those buildings on nearby homes and businesses, and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful temporary occupancy of such vacant properties; and

**WHEREAS**, the City Council has determined to amend portions of Chapter 141 of the City Code to improve and enhance the City's ability to manage vacant and boarded properties that threaten public health and welfare and better address the interests of the City, its residents, and the public at large.

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of New Castle as follows:

**SECTION 1:** A new Section 141-4 D is hereby added to the City Code to read as follows:

§141-4. Violations and penalties.

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**D.** The owner, agent, occupant or other person in control of any dangerous building or any building that is vacant or boarded, who shall refuse or obstruct access to such building or the parcel on which it lies by the Building Official or his/her designees for purposes of inspection, securing boarding up or emergency repairs as authorized in this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to punishment as provided in §141-4 E of this code. If the Building Official is denied entrance to a dangerous building, or any building that is vacant or boarded for purposes of inspecting, securing and boarding up or emergency repairs as authorized by this Chapter, he/she may, upon a showing of probable cause of a violation of this Chapter, obtain a warrant from a Justice of the Peace or other judicial officer having jurisdiction for purposes of entering, inspecting, securing, boarding up or making emergency repairs to the subject building or structure. No entry by the Building Official, whether with or without a warrant, on to private property pursuant to this Chapter shall be deemed a trespass.

**SECTION 2:** Existing Section 141-4 D of the City Code is hereby redesignated as Section 141-4 E.

**SECTION 3:** Section 141-6 of the City Code is hereby amended to read, in its entirety, as follows:

**§ 141-6 Securing open areas.**

**A.** It shall be unlawful for any owner, agent, or person in control of any building or structure which is vacant and open or otherwise dangerous to fail to secure and board up the open areas of any such building or structure. If, after seven (7) days written notice by certified mail to the owner at his/her last known address as shown on the tax records of New Castle County, the building or structure is not secured, but rather remains vacant and open or otherwise dangerous, the Building Official may enter upon the premises, building or structure and secure or board up the open areas of such building or structure, or cause the same to be done.

**B.** The owner or owners of the subject building or structure shall be jointly and severally liable to the City for the full amount so expended in securing and boarding it up. The owner, agent or person in control of such building or structure shall reimburse the City for all costs incurred by the City in so securing or boarding up such building or structure. The City may maintain an action at law in debt against such owner or owners to recover the amount of money so expended, plus interest at the rate of eighteen per cent (18%) per annum, court costs and legal fees.

**C.** The Building Official shall send certified mail notice to the owner or owners of a boarded building or structure at his/her last known address as shown on the tax records of New Castle County advising them that they are jointly and severally responsible for taking appropriate action to repair and rehabilitate such building or structure by returning it to full compliance with the City's Building Construction Code (Chapter 102), Building Standards for One and Two Family Dwellings Code (Chapter 103) and the Housing and Property Maintenance Code (Chapter 140) and securing a Certificate of Occupancy from the Building Official within ninety (90) days of the date of such notice. The notice shall provide that unless an extension is granted pursuant to Subsection E, the owner or owners of a boarded building or structure shall be jointly and severally liable for fines in the amount of \$500.00 per day for each day beyond said ninety (90) day period (or each day beyond the period of extension granted pursuant to Subsection E) that such building or structure remains boarded in whole or in part. The notice shall further provide that such fines, as well as all costs incurred by the City in so securing or boarding up such building or structure, if any, shall represent a lien on the subject building or structure and the real property on which it lies, and that the amount of the lien shall be considered a tax lien and executable as such and shall include all court costs and legal fees.

**D.** The Building Official shall send certified mail notice to any person(s) or entity that acquires record title to any boarded building or structure to the Owner at his/her last known address as shown on the tax records of New Castle County that they are jointly and severally responsible for taking appropriate action to repair and rehabilitate such building or structure by returning it to

full compliance with the City's Building Construction Code (Chapter 102), Building Standards for One and Two Family Dwellings Code (Chapter 103) and the Housing and Property Maintenance Code (Chapter 140) and securing a Certificate of Occupancy from the Building Official within ninety (90) days of the date of such notice. The notice shall provide that unless an extension is granted pursuant to Subsection E, the owner or owners of a boarded building or structure shall be jointly and severally liable for fines in the amount of \$500.00 per day for each day beyond said ninety (90) day period (or each day beyond the period of extension granted pursuant to Subsection E) that such building or structure remains boarded in whole or in part. The notice shall further provide that such fines, as well as for all costs incurred by the City in so securing or boarding up such building or structure, if any, shall represent a lien on the subject building or structure and the real property on which it lies, and that the amount of the lien shall be considered a tax lien and executable as such and shall include all court costs and legal fees.

**E.** It shall be within the discretion of the Building Official to grant an extension of time to permit a boarded building or structure to remain so in excess of the ninety (90) day periods set forth in Subsections C and D above, provided no extension shall exceed nine (9) months, if active rehabilitation of the building or structure is on-going and the following additional requirements are met:

(1) The owner of the property must submit a written letter to the Building Official describing in detail the specific work taking place or to take place, including a timetable of each aspect of the rehabilitation.

(2) All necessary building permits must be acquired, or if previously acquired, must be active and maintained throughout the rehabilitation process.

(3) The work being performed must be continual throughout the entire period the building remains vacant or boarded. If work is discontinued for more than twenty (20) consecutive days, the Building Official, may send written notice revoking the extension granted.

**F.** The definitions provided in Sections 141-3 and 141-19 defined in shall apply to all Sections of this Chapter.

**G.** An owner shall have the right to appeal the imposition of a fine assessed under this Section or any decision of the Building Official made under authority of this Chapter to the Board of Building Appeals upon filing an application, in writing, stating the reasons therefore along with a filing fee in an amount equal to that required of Board of Adjustment applications no later than thirty (30) calendar days after the date of the billing statement for such fine or the date of such decision, as the case may be. On appeal, the owner shall bear the burden of providing satisfactory evidence why such fine(s) shall not apply or why the Building Official's decision should be reversed or revised.

**SECTION 4:** Section 141-19 of the City Code is hereby amended to read, in its entirety, as follows:

**§ 141-19 Annual registration of vacant buildings; registration fees.**

**A. Purpose.** The purpose of this Section requiring the registration of all vacant buildings and the payment of registration fees is to assist the City government in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the City, to assess the effects of the condition of those buildings on nearby homes and/or businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this Section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter, the health and sanitation code, and any other applicable provisions of the New Castle City Code.

**B. Definitions; applicability; registration statement and fees.**

(1) **Definitions.** For purposes of this Section, the following words and phrases shall have the meanings respectively ascribed to them as follows:

**BOARDED** - A building or structure subject to the provisions of this Section shall be deemed to be "boarded" if, in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.

**EXTERIOR MAINTENANCE AND MAJOR SYSTEMS** - The safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk and driveway, if any, area of the lot.

**OCCUPIED** - Any building or structure shall be deemed to be occupied if one or more persons actually conduct a lawful business or reside in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner-occupant or tenant on a permanent, non-transient basis, or any combination of the same. For purposes of this Section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid City business license or the most recent federal, state or City income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of pre-rental inspection.

**OPEN** - A building or structure subject to the provisions of this Section shall be deemed to be "open" if any exterior door other than a storm door is broken, open, or closed but without a properly functioning lock to secure it, or if one or more windows are broken or not capable of being locked and secured from intrusion, or any combination of the same.

**OWNER** - An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this Section, and as set forth below.

**VACANT** - A building or structure shall be deemed vacant if no person or business entity actively conducts a lawfully licensed business on a regular basis therein, or if no person lawfully resides or lives on a regular basis therein. A building or structure shall not be deemed vacant for purposes of the application of this Section if a person who normally conducts a lawfully licensed business in the building or structure, or if a person who lawfully resides or lives in any part of the building or structure shall be temporarily absent from the premises for reasons of: (1) vacation (including seasonal vacations not to exceed 6 months), or (2) illness, military deployment, sabbatical, compassionate leave or other similar reason for a period not to exceed two (2) years from the commencement of such absence.

(2) Applicability. Except as otherwise provided in this Chapter, the requirements of this Section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 45 consecutive days, and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 45 consecutive days. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and valid addresses, telephone numbers and email addresses of all owners, as hereinafter described, and any other information deemed necessary by the City. The registration fees as required by Subsection **B (3)** of this Section shall be billed by the City and shall be paid by January 1 of each year. For purposes of this Section, the following shall also be applicable:

(a) If the owner is a corporation, limited liability company or other artificial entity, the registration statement shall provide the names, addresses, telephone numbers and email addresses of all members, partners, principals and owners holding an interest of 10% or greater in the entity, as well as all officers and managers of the entity, and shall be accompanied by a copy of the most recent annual franchise tax report filed with the Secretary of State;

(b) If an estate, the registration statement shall provide the name(s), address(es), telephone number(s) and email address(es) of the personal representative of the estate;

(c) If a trust, the registration statement shall provide the name(s), address(es), telephone number(s) and email address(es) of all trustees, grantors and beneficiaries;

(d) If an individual person, the registration statement shall provide the name, residence address, telephone number and email address of that individual person.

(3) Registration statement and fees; local agent. If none of the persons listed above is shown at an address within the state, the registration statement shall also provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or

agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for 45 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with all other provisions of this Chapter 141, or any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering. The owner of the vacant property as of November 15 of each calendar year shall be responsible for the payment of the nonrefundable registration fee. Said fee shall be billed annually by the City and based on the duration of the vacancy as determined by the following fee schedule:

- (a) No fee for properties that are vacant for less than one year;
- (b) For each property that is vacant for at least one year but less than three years: \$1,000.00; and
- (c) For each property that is vacant for at least three or more years: \$3,000.00 per year.

Vacant property registration fees shall be due and owing no later thirty (30) days after date of invoicing. Late payments shall accrue interest at eighteen percent (18%) per annum.

**C. Inspections.** Any structure or dwelling that remains vacant (whether or not registered with the City under this Section) for in excess of one (1) year shall be subject to inspection by the Building Official from time to time as the Building Official reasonably deems appropriate to determine the safety and stability of such structure or dwelling. If the Building Official is denied entrance to the vacant building or structure for purposes of inspecting same, he/she may, upon a showing of probable cause, obtain a warrant from a Justice of the Peace as authorized by Section 141-4 D of this Chapter.

**D. Retroactivity.** This Section shall be applied retroactively. Any building which is vacant on the date of the enactment of this Section shall be charged such registration fee as is appropriate based upon the length of time which such building or structure has been continuously vacant immediately prior to the date of enactment of this Section.

**E. Appeal rights.** The owner shall have the right to appeal the imposition of the registration fees to the Board of Building Appeals upon filing an application, in writing, with a nonrefundable filing fee equal to that required of Board of Adjustment applications to the Department of Licenses and Inspection no later than thirty (30) calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory, objective proof of occupancy.

**F. One-time waiver of registration fee.** A one-time waiver of the registration fee may be granted by the Board of Building Appeals upon application of the owner, if the owner:

(1) Demonstrates with satisfactory proof that he/she is actively and continuously in the process of demolition, rehabilitation or other substantial repair of the vacant building; and

(2) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation or other substantial repair of the vacant building, not to exceed nine (9) months from the date the waiver is granted.

**G. Two-year waiver.** Upon application by the owner and satisfaction of Subsection **F** above, the Board of Building Appeals may grant a two-year waiver of the registration fee if the owner of a property intended for residential use meets the criteria for nonprofit organizations as defined by § 501(c)(3) of the Internal Revenue Code of 1986, as same may be amended.

**H. Delinquent registration fees as a lien.** After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to Subsection **E** above, and the owner fails to pay the amount due, said amount shall constitute a civil debt due and owing to the City and shall further constitute a lien in favor of the City on the subject building or structure and the real property on which it lies. The amount of the lien shall be considered a tax lien, executable as such and shall include all interest, court costs and legal fees.

**I. Duty to amend registration statement.** If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the Department of Licenses and Inspections within 30 days of the occurrence of such change and advise the Department, in writing, of those changes.

**J. Exceptions.** This Section shall not apply to: (1) any building owned by the United States, the state, the City, nor to any of their respective agencies or political subdivisions; or (2) any non-residential building owned by a nonprofit organization as defined by § 501(c)(3) of the Internal Revenue Code of 1986, as same may be amended.

**K. Violations and penalties.** The failure or refusal, for any reason, of any owner or agent of an owner acting on behalf of the owner to register a vacant building or to pay any fees required to be paid pursuant to the provisions of this Section within 30 days after they become due shall constitute a violation, punishable upon conviction thereof by a fine in the amount of not less than \$100 nor more than \$500 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100 is imposed, it shall not be subject to suspension or reduction for any reason.

**SECTION 5:** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 6.** In the event any existing Ordinances or parts of Ordinances are in conflict herewith, the provisions of this Ordinance shall control.

