

Introduced by: Mr. Tackett  
Date of introduction: April 25, 2017

**SUBSTITUTE NO. 1 TO  
ORDINANCE NO. 17-033**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 7 (“PROPERTY  
MAINTENANCE CODE”), ARTICLE 2 (“REGISTRATION AND PAYMENT OF FEES  
FOR VACANT PREMISES”), REGARDING THE REGISTRATION OF  
VACANT PREMISES**

**WHEREAS**, New Castle County Council adopted Substitute No. 2 to Ordinance No. 14-117 to address the deleterious effects of vacant premises on a community and the County in general, and to require the registration of all vacant premises by the party responsible for said premises; and

**WHEREAS**, it has been determined that changes to the registration fee structure are necessary to offset the costs associated with the inspection and monitoring of registered vacant premises; and

**WHEREAS**, it has also been determined that many vacant premises are not being timely registered and, if a responsible party fails to register a vacant premises, the Department of Land Use shall have the authority to register the vacant premises upon a finding of vacancy made pursuant to an administrative hearing and assess fees and costs against the vacant premises; and

**WHEREAS**, it further has been determined that changes are necessary to the vacant premises registration requirements to clarify the provisions, accommodate the practices and procedures of the Department of Land Use, incorporate a process that allows the Department of Land Use to register vacant premises if the responsible party fails to do so, create a mechanism that allows the Department to recover the administrative costs of registering vacant premises; and

**WHEREAS**, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this County).

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

Section 1. *New Castle County Code* Chapter 7 (“Property Maintenance Code”), Article 2 (“Registration and Payment of Fees for Vacant Premises”), is hereby amended by adding the language that is underscored and deleting the language that is stricken and bracketed, as set forth below.

**Sec. 7.02.001. General.**

A. *Purpose.* It is the intent of this Article to protect the public health, safety and welfare of the general public by imposing a registration requirement and fees on persons responsible for ~~[vacant properties in New Castle County, which properties]~~ developed parcels that remain vacant for more than ninety (90) days. Vacant premises are more likely than occupied premises to be subject to ~~[structures to become sites of ordinance]~~ property maintenance violations and illegal activity and to pose a greater burden on County resources including: code enforcement, fire and rescue, [resources] and police. The costs of the increased use of these resources [that] should be borne by those creating the demand [for these resources;]. It also is the intent of this Article to [with the ultimate goal of promoting] encourage the rehabilitation and occupancy of these premises.

B. *Existing remedies.* Nothing in this Article . . . .

C. *Definitions.* The words, terms and phrases used in this Article shall have the definitions provided in Article 1 of this chapter, or other chapters of the New Castle County Code if not defined in this chapter, except that [F]the following words, terms and phrases[; when used in this Article,] shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

Active land development site means a site where a building permit or certificate of occupancy has been issued within the preceding one-hundred-twenty (120) days for the construction or occupancy of a new home on a lot depicted on a minor or major land development plan.

Building means that definition as provided in Chapter 40, Article 33 of the New Castle County Code.

*Default* with respect to a mortgage, means that the obligor under the mortgage has breached or is in default of a repayment or other obligation in connection with that mortgage.

Department means the New Castle County Department of Land Use.

*Occupied* means any building ~~[or structure]~~ wherein one or more persons actually conducts a lawful business ~~[or resides]~~ in all or any part of the building as the licensed business-occupant, or resides as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this ~~Section~~ Article, 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; absence of property maintenance violations; a valid business license; or the most recent federal or state income tax statements indicating that the subject property is the official business or residence address of the person(s) or business(es) claiming occupancy. ~~[Model homes on active development sites shall be considered occupied.]~~

Property means any lot or parcel of land that has been assigned a tax parcel number by New Castle County.

Responsible party means either the property owner, mortgagee, executor, heir or attorney who is responsible for registering vacant premises.

Vacant premises means any [premises] building intended for residential or commercial use which is not currently occupied or in use wherein no person or persons actually, currently conduct a lawful[ly licensed] business or lawfully reside or live in any part of the building as the legal or equitable owner(s) or tenant-occupant(s) or tenant(s) on a permanent, non-transient basis or that is unoccupied. Evidence offered to prove that a building is vacant may include, but shall not be limited to: accumulation of mail, advertising flyers, or other materials delivered to or posted upon the property or premises; disconnection of telephone, electric, gas, heating, water or sewer services; overdue sewer service charges or property taxes; one (1) or more property maintenance violations issued against the property address within one-hundred-twenty (120) days preceding the issuance of a violation notice finding vacancy; absence of vehicles on the property with current registrations; absence of evidence of occupancy upon visual inspection or upon information provided by proximate property owners or tenants of proximate property.

D. Exceptions. This Article shall not apply to:

1. Property or rights-of-way owned or controlled by a governmental entity.
2. Property within the jurisdiction of the Village of Arden.
3. A model home or a newly-constructed home that has not yet been occupied and that is located within an active land development site if:
  - a. The model home is actively used to market homes within that land development site; or
  - b. The newly constructed home is actively marketed for sale and available for purchase by a bona fide purchaser.

[Applicability. The requirements of this Article are applicable to each owner of any vacant premises that has been vacant for more than ninety (90) consecutive days. Each such owner shall cause to be filed a registration statement, on a form to be developed by the Department of Land Use, which shall include the street address and parcel number of each vacant premises, the name(s) and address(es) of all owners, the type of business organization of the owner(s), and any other information deemed necessary by Code Enforcement. If the owner is an entity represented by an authorized agent, the Department of Land Use shall also require the name, mailing address, street address (if different from the mailing address), business phone number, facsimile number and email address of the registered agent, in addition to any other information deemed necessary by the Department. The registration fee(s) described in Section 7.02.002 shall be billed by the County and shall be paid by January 1 of each year.]

**Sec. 7.02.002. Registration ~~[statement,] requirement; [fees, exceptions and duty to amend] registration statement.~~**

A. *Registration.* The responsible party shall register ~~[Registration shall be required for all] each vacant premises~~ ~~[that have remained vacant for ninety (90) consecutive days or more]~~ as ~~[further] defined~~ ~~[scribed]~~ in Subsection 7.02.001 with the Department pursuant to the timeframes provided herein. ~~[(D) above; registration is required within ten (10) days of premises being vacant for ninety (90) days. One registration statement may be filed to include all vacant premises of the owner so registering. In no instance shall the registration of vacant premises exonerate the owner, agent or party responsible from the responsibility to comply with other Code requirements.]~~

1. *Responsible Party.* A property owner shall file, or cause to be filed, a registration statement for each vacant premises within ten (10) days of such premises being vacant for ninety (90) consecutive days.

2 ~~[B].~~ *Mortgagee.* When a mortgagor has been determined to be in default of a mortgage by a mortgagee, the mortgagees shall ~~[inspect the mortgaged property to]~~ determine whether such property is vacant. The mortgagee's duty to determine whether the premises become vacant shall continue as long as the mortgagor remains in default. Within ten (10) days of ~~[an inspection,]~~ the premises becoming vacant, the mortgagee shall file, or cause to be filed, a registration statement. ~~[register the property with Code enforcement. If the property is vacant, registration shall also contain the name and telephone number, facsimile number and email address for a direct contact with the mortgagee and the name and twenty-four (24) hour contact phone number for the property management company that will be responsible for the security and maintenance of the property, if different from mortgagee.]~~

3. If multiple vacant premises exist on one property, the responsible party may include all vacant premises on one (1) registration statement.

B. *Registration Statement.* Registration shall be made on a form provided by the Department and shall include: the street address and tax parcel number of the vacant premises, the name(s) and address(es) of all owners, the type of business organization of the owner(s), and any other information deemed necessary. If the owner is an entity represented by an authorized agent, the name, mailing address, street address (if different from the mailing address), business phone number, facsimile number and email address of the registered agent, in addition to any other information deemed necessary by the Department, shall be required. Mortgagees shall also include the name and telephone number, facsimile number and email address for a direct contact with the mortgagee and the name and twenty-four (24) hour contact phone number for the property management company that will be responsible for the security and maintenance of the property.

~~[C. Fees. The owner of the vacant premises as of November 1 of each calendar year shall be responsible for paying the non-refundable registration fee by January 1 of each calendar~~

~~year. Fees shall be: Zero dollars (\$0.00) for vacant premises vacant for less than one year; one hundred dollars (\$100.00) for vacant premises vacant at least one year but less than two (2) years; five hundred dollars (\$500.00) for vacant premises vacant for at least two (2) years but less than three (3) years; one thousand dollars (\$1,000.00) for vacant premises vacant for at least three (3) years but less than five (5) years; three thousand five hundred dollars (\$3,500.00) for properties that are vacant for at least five (5) years but less than ten (10) years; five thousand dollars (\$5,000.00) for vacant premises that are vacant for at least ten years plus an additional five hundred dollars (\$500.00) for each year in excess of ten (10). This escalating fee schedule reflects the inevitable increased social and economic costs associated with vacant and likely deteriorating vacant premises over a progression of years and also is intended to encourage rehabilitation and occupancy.]~~

~~C[D]. *Duty to amend.* It is the duty of the responsible party to update the registration statement with the Department [~~owner to contact Code Enforcement~~] within thirty (30) days upon occurrence of a change in registration information during the course of any [~~calendar year~~] registration period. Failure to timely amend a registration statement shall be considered a violation and be subject to a ten (10) dollar per day penalty. [~~The period of years the premises are deemed vacant will begin anew upon a change of registered owners unless it is proven by piercing the corporate veil or otherwise that the principals behind the new owners are the same as the former, with the title change in ownership an apparent attempt to avoid the fees.~~]~~

~~[E. *Exception.* Property owned or controlled by governmental entities shall be exempt from this Article. Property within the jurisdiction of the Village of Arden shall be exempt from this Article.]~~

**Sec. 7.02.003. [~~Waiver of~~] Annual registration renewal and registration fees; waiver of fees.**

A. *Annual registration and fees.* On or about November 1 of each calendar year, the Department shall provide notice to all registrants that vacant premises registration statements must be renewed. The notice shall provide the applicable annual registration fee. The responsible party shall submit the applicable form and the non-refundable registration fee before January 1 of each calendar year.

1. *Escalating fee schedule.* The fee schedule reflects the inevitable increased social and economic costs associated with long-term vacancy and also is intended to encourage rehabilitation, use and occupancy of the premise. The annual fee for each vacant premises shall be based upon the term of continuous vacancy as follows:

- a. Less than one year: \$100.
- b. One year and up to two years: \$500.
- c. Two years and up to three years: \$1000.
- d. Three years and up to five years: \$2,000.
- e. Five years and up to ten years: \$3,500.

f. Ten years or greater: \$5,000 plus an additional \$500  
for each additional year over ten.

2. The term of vacancy will begin anew upon a change of registered owners unless the principals behind the new owners are the same as the former, with the title change in ownership an apparent attempt to avoid the fees, defeat the ends of justice, perpetuate a fraud, or otherwise evade the law.

B. Waiver of registration fees. A one-time waiver of the annual registration fees [~~or a waiver of the fee for up to ninety (90) days~~] may be granted by the Code Official for good cause shown and subject to all of the following conditions: [~~or designee upon application of the owner and upon review and advice of the Office of Law within thirty (30) days from the date of the bill for the registration fee, or if denied, upon appeal to the Board as set forth above, if the owner: 1) demonstrates that he/she or it is in the process of demolishing, rehabilitating or repairing the vacant premises; 2) is actively attempting to sell or lease the vacant premises; 3) has paid all registration fees and other financial obligations to the County associated with the vacant premises. The time period for extension as the result of a waiver will begin on the date of the written decision granting the extension and shall not exceed ninety (90) days.~~]

1. All financial obligations associated with the vacant premises that are owed to the County are paid and current except for the registration fees that are subject to the waiver request.
2. There are no open zoning, building or property maintenance code violations on the property.
3. The owner is in the process of demolishing, rehabilitating or repairing the vacant premises; the owner is actively attempting to sell or lease the vacant premises; or the property is subject to a blight remediation or redevelopment program which the County or other legally designated housing authority has approved.

C[B]. Fee exemption. Upon approval of the Code Official, a private, public, for-profit or non-profit organization that has been building, rehabilitating, and providing affordable housing units within the County or some other similar jurisdiction for at least five (5) years shall be exempt from the registration fee requirements of this Article.

**Sec. 7.02.004. [Violations; fines; penalties; liens.] Failure to register; registration by Department.**

A. Failure to register. Failure to timely register a vacant premises shall constitute a violation of this Article. Upon finding the responsible party has failed to register or renew a registration, the Department shall issue a violation notice stating that the premises has been vacant for ninety (90) days or longer.

B. Violation Notice. Such notice shall order the responsible party to register the vacant premises within ten (10) days from the date of issuance of the violation notice or be subject to the Department's registration of the vacant premises, plus fees and penalties. The violation notice shall provide an opportunity for the responsible party to be heard before an administrative hearing officer.

C. Administrative hearing. At the administrative hearing, the hearing officer shall determine whether sufficient evidence of vacancy has been established by the Department. The responsible party shall then be afforded the opportunity to provide objective proof of occupancy or demonstrate that the property is exempt from the provisions of this Article. If the hearing officer determines that the premises has been vacant and not registered by the responsible party in violation of this Article, a written decision shall be issued that contains a finding of vacancy and directing the responsible party to register the vacant property within ten (10) days and pay the administrative hearing fee. The decision shall also provide that a \$1,000.00 administrative fee shall be added to the applicable registration fees if the responsible party fails to register the vacant property within ten (10) days.

D. Department registration. Upon expiration of the appeal period or any stay of the hearing officer's decision, if the responsible party fails to file a registration statement and pay applicable registration fees as ordered by the hearing officer, the Department shall register the vacant property. The Department shall charge the responsible party the applicable registration fee plus an additional \$1,000.00 administrative fee.

E. Notice. Except as otherwise provided in this section, all notice and administrative enforcement procedures shall be as set forth in Article 1 of this chapter.

~~[After an owner is given notice of the registration fee due or of failure to update information required, other than an owner who or that has perfected an appeal, and the owner fails to pay the amount due, the administrative penalty shall be one hundred fifty dollars (\$150.00) for the first violation regardless of the number of vacant premises that have not been registered by the owner. Failure to register vacant premises or update information within ten (10) days of receiving the penalty notice shall result in a penalty of ten dollars (\$10.00) a day thereafter for each vacant premises not properly registered; the penalty shall continue until the vacant premise(s) is/are registered. After notice of the registration fee due and/or failure to update information (except for owners who have perfected an appeal), the fee and penalty shall constitute a debt owed to New Castle County.]~~

#### **Sec. 7.02.005. Appeal rights.**

~~[The owner]~~ A responsible party has the right to appeal a finding of vacancy ~~[imposition of the registration fees first to the Land Use Department's Administrative Hearing Officer, with a subsequent right of appeal]~~ to the Board of License, Inspection and Review ~~[upon filing an application and fee set by the Board. The initial appeal shall be filed no later than ten (10) business days from the date of billing statement as set forth in Section PM 106.3.1.2.4.1. And, the department and appellate procedures shall be as set forth in Section PM 106.3.1.6. A subsequent].~~ The appeal to the Board of License, Inspection and Review shall be filed with the Department of Land Use within ten (10) days of the date the written decision is issued by the

hearing officer[Department]. [~~On appeal, the owner shall bear the burden of providing objective proof of occupancy of the premises. A notice of lien and other charges as permitted by 29 Del. C. Ch. 29 may be filed after the expiration of all stays.~~]

**Sec. 7.02.006. Duty to maintain property.**

In no instance shall registration of a vacant premises exonerate a responsible party from maintaining the property and complying with all *New Castle County Code* requirements. If a vacant premises and the property on which it is located is not maintained pursuant to the provisions of the *Code*, fees and penalties may accrue and be charged against the property.

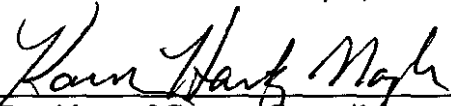
**Sec. 7.02.007. Creation of lien for unpaid charges, fees and penalties.**

Any unpaid charges, fees and penalties shall be considered a tax lien and collected in the same manner as other County real estate taxes.


Section 2. Severability. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent.

Section 3. This ordinance shall become effective immediately upon adoption by New Castle County Council and approval of the County Executive, or as otherwise provided in 9 Del. C. § 1156.

Adopted by County Council of  
New Castle County on: 5/9/17

  
\_\_\_\_\_  
President of County Council  
of New Castle County

Approved on: 5/16/17

  
\_\_\_\_\_  
County Executive  
New Castle County



**SYNOPSIS:** This Ordinance restructures the vacant premises registration provisions to reflect current Departmental practices and procedures and to provide consistency with other *New Castle County Code* provisions. It also clarifies that after initial registration, all vacant property registrations must be renewed prior to January 1 of each calendar year. In addition, registration fees for premises that have been vacant for up to five (5) years will be increased upon adoption of this Ordinance.

The Ordinance also establishes a process that allows the Department to register vacant premises if the responsible party fails to file a vacant premises registration statement. Failure to register a vacant property will result in an additional \$1,000 administrative fee. This administrative fee is necessary to account for costs incurred by the Office of Code Enforcement to: regularly inspect vacant premises; establish evidence of vacancy; research and establish ownership and mortgagee interests; and enforce registration requirements. The fee is also intended to encourage responsible parties to voluntarily register vacant properties to avoid this additional fee.

Substitute No. 1 to Ordinance No. 17-033 makes minor, mostly typographical corrections, but not substantive changes. In particular, Substitute No. 1 includes the following changes: changed the formatting of the terms "Building" and "Property" to be consistent with the formatting of other terms in the "Definitions" section (Section 7.02.001.C.); at Section 7.02.001.D.3.b., changed the word "marked" to "marketed"; at Section 7.02.002.B., changed the word "Mortgagors" to "Mortgagees"; at Section 7.02.007, eliminated the last sentence since the terminology was superfluous; and added language to the Synopsis to explain that registration fees are being increased for premises that have been vacant for up to five years.

**FISCAL NOTE:** This Ordinance, if adopted, will have no discernible fiscal impact.