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EXECUTIVE ORDER 2022-1
Consolidated Executive Order Governing Monitions

WHEREAS, 9 *Del. C.* § 330 provides the New Castle County Government with general powers and duties to direct, manage, and control its business and finances; and

WHEREAS, 9 *Del. C.* § 1116 requires the New Castle County Executive to ensure that the duties and responsibilities of the executive and administrative agencies of the County are properly performed and that the work of the county offices, departments, and agencies are properly coordinated; and

WHEREAS, 9 *Del. C.* § 8721 established the monition method that authorizes New Castle County's taxing authority to pursue the sale of real property to collect certain monies owed to the County; and

WHEREAS, I have issued a number of Executive Orders relating to monitions and intend this Executive Order to consolidate all currently effective Executive Orders relating to monitions; and

WHEREAS, on December 1, 2017, I issued Executive Order 2017-6, in which I precluded the monition process from being utilized against residential properties occupied by the owner or legal tenant who enters into, and complies with, a good faith payment plan; and

WHEREAS, on December 1, 2017, I issued Executive Order 2017-7, in which I implemented the Procedure for the Prioritization of Properties for Sheriff's Sale; and

WHEREAS, on February 28, 2018, I issued Executive Order 2018-5, in which I implemented the policy on Acquisition of Properties through the Monition Process and Disposition of those Properties; and

WHEREAS, on July 31, 2018, I issued Executive Order 2018-11, in which I authorized the monition process to be utilized against owners of commercial properties or two or more residential properties where, after notice from the New Castle County Chief Financial Officer, or the Chief Financial Officer's designee, the owner fails to cure unpaid property taxes, sewer charges and fees and/or violations of the New Castle County Property Maintenance Code; and

WHEREAS, on October 18, 2018, I issued Executive Order 2018-12, in which I modified the policy on Acquisition of Properties through the Monition Process and Disposition of those Properties by adding selling through listing on the Multiple Listing Service as an approved method of disposition; and

WHEREAS, on March 4, 2020, I issued Executive Order 2020-1, in which I authorized the Chief Financial Officer, or the Chief Financial Officer's designee, to utilize the monition process against open space parcels encumbered with unpaid taxes or liens, and owned by a defunct, unknown or unresponsive owner, instead of New Castle County or a neighborhood maintenance corporation,

WHEREAS, on April 3, 2020, in response to the COVID-19 public health threat, I issued Executive Order 2020-5, in which I, in part, implemented a prohibition of new monition actions and executions on any existing judgments.

WHEREAS, on July 22, 2020, I issued Executive Order 2020-7, in which I rescinded Executive Order 2020-5's prohibition of new monition actions and the execution on any existing judgments, and permitted the County to initiate monitions and execute on existing judgments for delinquent vacant residential and commercial properties only so long as the delinquency in amounts owed to the County existed before March 12, 2020; and

WHEREAS, on February 10, 2021, I issued Executive Order 2021-01, in which I rescinded Executive Order 2020-7, and permitted the County to initiate monitions and execute on existing judgments for delinquent *vacant* residential and commercial properties if the delinquency in amounts owed to the County existed before March 12, 2020, and permitted the County to initiate monitions and execute on existing judgments for *occupied* vacant residential and commercial properties if the property is deemed a detriment to public safety by the New Castle County Chief of Police, Chief Administrative Officer, or County Executive, and the delinquency in amounts owed to the County existed before March 12, 2020; and

WHEREAS, on April 23, 2021, I issued Executive Order 2021-03, in which I modified the policy on Acquisition of Properties through the Monition Process and Disposition of those Properties by adding transfer to a governmental entity as an approved method of disposition; and

WHEREAS, notwithstanding the detrimental financial and public health impacts of the COVID-19 pandemic, it is necessary for the County to address public health and safety issues stemming from residential and commercial properties.

WHEREAS, nonpayment of property taxes and sewer charges, unrecovered expenses incurred through the abatement of New Castle County Code violations, and unpaid fees and penalties assessed through the administrative enforcement process create significant financial strains on County government; and

WHEREAS, it is important to limit the drain of County resources caused by vacant premises, by property owners who neglect to maintain their properties, and by property owners who fail to pay taxes, charges, expenses, fees and penalties owed to the County; and

WHEREAS, the County may collect unpaid taxes, charges, expenses, fees and penalties through the monition process pursuant to the Delaware Code; and

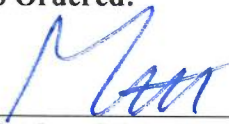
WHEREAS, utilizing the monition process to recover delinquent monies is essential to the County's overall financial health and is an integral part of the County's vacant housing strategy to improve communities and shift the cost of vacancy to responsible parties; and

WHEREAS, it is necessary to take appropriate action, including invoking the monitions process, to address the financial strain and hazards caused by problem commercial and residential property owners, and by abandoned or orphaned space parcels.

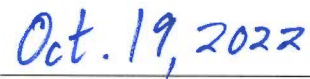
NOW THEREFORE, I, the County Executive, direct that the following policy be implemented:

1. Executive Orders 2017-6, 2017-7, 2018-5, 2018-11, 2018-12, 2020-1, 2020-5, 2021-1, and 2021-03 are rescinded.
2. When the Chief Financial Officer, or the Chief Financial Officer's designee, determines that an owner of one (1) or more commercial properties, or two (2) or more residential properties displays a disregard for the owner's obligations to pay taxes, sewer charges and fees and/or maintain the owner's properties in accordance with the New Castle County Property Maintenance Code ("Problem Property Owner"), and if that owner fails to promptly cure all outstanding obligations and/or violations after notice from New Castle County, the Chief Financial Officer, or the Chief Financial Officer's designee, is authorized to commence legal action, including the monition process, against any or all properties of the Problem Property Owner.
3. When the Chief Financial Officer, or the Chief Financial Officer's designee, together with the General Manager of the Department of Public Works or the General Manager's designee, or the General Manager of the Department of Land Use or the General Manager's designee, determines that an abandoned or orphaned open space parcel encumbered by unpaid taxes or liens remains in the ownership of a defunct, unknown or unresponsive owner, instead of New Castle County or a neighborhood maintenance corporation as intended, the Chief Financial Officer, or the Chief Financial Officer's designee, is authorized to effectuate transfer of legal title from that owner to the proper entity by any lawful manner, including the monition process.
4. The Procedure for the Prioritization of Properties for Sheriff's Sale via the Monitions Process, attached as Exhibit A, shall be utilized to initiate a monition in any circumstance not addressed in paragraphs 2 or 3.
5. Acquisition of Properties through the Monition Process and Disposition of those Properties, attached as Exhibit B, applies to all monitions.
6. This Executive Order shall become enforceable immediately upon signature by the New Castle County Executive. This Executive Order shall remain in effect until and unless rescinded or modified by subsequent order of the New Castle County Executive.

So Ordered:



Matthew Meyer
New Castle County Executive



Date

EXHIBIT A

EXECUTIVE POLICY
PROCEDURE FOR THE PRIORITIZATION
OF PROPERTIES FOR SHERIFF'S SALE

- I. **Prioritizing Eligible Properties.** The General Managers of the Departments of Land Use and Community Services, the Chief Financial Officer, the Director of Public Safety, and the Chief of Staff, or the designees of each, shall form a review team to identify properties eligible for Sheriff's Sale. The Department of Land Use and Office of Finance shall provide a list of properties that meet the eligibility criteria for consideration. The eligibility list shall list all County liens for each property. From the eligibility list, the review team shall prioritize the properties based upon the criteria below. The review team shall meet regularly to review the list of properties eligible for Sheriff's Sale.

- II. **Eligibility List.** For the purpose of this section "County liens" may include any combination of: (1) property taxes; (2) school taxes; (3) sewer fees; (4) code enforcement liens that have been moved to the tax bill; (5) code enforcement liens that have been not moved to the tax bill; (6) any other fee or money that is due and payable to the County and that may be recovered through the monition process. Properties eligible for the monition process include:
 - A. Any parcel that is: 1) either registered as vacant or not occupied by a legal owner or tenant at the time the monition is filed; and 2) encumbered by County liens that equal no less than \$5,000 at the time the monition is filed.
 - B. Any occupied parcel that is encumbered by \$10,000 of County liens at the time the monition is filed unless: 1) the parcel is occupied by the owner or a legal tenant; and 2) the owner has entered into a good faith payment plan with the Office of Finance and the owner is in full compliance with all terms of the payment plan.
 - C. Occupied or vacant parcels that are deemed a detriment to public safety by the New Castle County Chief of Police, Chief Administrative Officer or County Executive.
 - D. Any parcel meeting any other criteria for collection established by the Chief Financial Officer.

- III. **Priority List - Prioritization of Properties for Monition Process.** The review team shall consider the following criteria when creating the priority list. Formulating the priority list necessarily will be a subjective process, and the criteria are intended only to provide a framework for deliberation. Discretion may be exercised when determining the weight to be afforded to each criterion. The review team shall forward the priority list, which shall list all County liens for each property, to the Chief Financial Officer and the County Attorney. The priority list shall exclude all properties that Land Use determines have a reasonable likelihood of environmental contamination.
 - A. *Public Safety Issues.* Calls for service; strain on public resources; blighting impact to the community.
 - B. *Land Use/Economic Development priorities.* Comprehensive planning concerns, such as character areas, future land use maps, or corridor studies; long-term planning strategies,

including redevelopment or rezoning areas; problem property issues, including violation and abatement history; future use of the land taking into consideration protected resources, such as floodplain or wetland issues; environmental or hazardous condition issues; and the cost of future abatements on the long-term marketability of the land.

- C. *Community Development priorities.* Neighborhood stabilization programs with public and private funding; nonprofit housing development areas of stabilization; areas identified by the County for stabilization efforts; benefits of grouping/cluster; marketability and partner interest.
 - D. *Office of Finance considerations.* Receivables; economic benefits to County; potential compliance impact of collection activity.
 - E. *Marketability of the property.*
 - F. *Potential displacement of legal tenants.* For parcels occupied by a legal tenant, the review team shall consider the potential strain on County resources of starting the monition process against the parcel, including but not limited to future housing relocation assistance to the occupants.
- IV. **Monition Process.** The County Attorney, or the County Attorney's designee, shall review the priority list for legal impediments to the monition process, including pending legal appeals, federal tax liens, and bankruptcy protection. The County Attorney, or the County Attorney's designee, upon consultation with the Chief Financial Officer, or the Chief Financial Officer's designee, and subject to the resources of the Office of Law, shall thereafter begin the monition process for those properties determined to be appropriate for Sheriff's Sale. Upon request, the Office of Law shall provide the Chief Financial Officer, and the General Managers of Land Use and Community Services a list of properties on which monition pleadings have been filed and a list of properties that will not be subject to the monition process including the reasons therefore (i.e., legal impediments).

EXHIBIT B

EXECUTIVE POLICY

ACQUISITION OF PROPERTIES THROUGH THE MONITION PROCESS AND DISPOSITION OF THOSE PROPERTIES

- I. **Acquisition and Disposition Team.** The General Managers of the Departments of Land Use, Community Services and the Office of Administrative Services, the County Attorney, the Chief Financial Officer, and the Chief of Staff, or their designees, shall form a team to review properties that have sold through the monition process and make recommendations to the County Executive concerning the acquisition and disposition of those properties (the "Acquisition and Disposition Team").
- II. **Review of Properties after Sheriff's Sale.** Within 48 hours of the completion of a Sheriff's Sale, the Office of Law shall notify the Chief Financial Officer and the Acquisition and Disposition Team of the result of the auction. Within twenty (20) days of receiving the auction results, the Acquisition and Disposition Team shall review the results of the auction and recommend one of the following actions for each sale based upon the policies contained herein.
- III. **Disapproving the Bids of Third-Party Purchasers.** The Chief Financial Officer has the authority to approve or disapprove a final bid for any reason. In cases where a bid is disapproved, the County necessarily will absorb the costs of taking the property to sale, and the taxes and liens associated with property will remain uncollected. Thus, bids should be disapproved only where there is an indication that approving a bid will be counterproductive to the goals of efficient tax collection, reducing the cycle of vacancy, and putting properties back into productive use. When possible, the Chief Financial Officer shall confer with the County Attorney on all bid disapprovals within thirty (30) days of the date of the Sheriff's Sale. The Acquisition and Disposition Team may recommend to the Chief Financial Officer disapproval of a bid for any of the following reasons:
 - A. The third-party purchaser owes unpaid past due taxes with respect to any real property located in the County.
 - B. A property owned by the third-party purchaser has been subject to collection action by the County for tax-delinquency within the previous ten years.
 - C. The third-party purchaser owes the County amounts for past due bills, fines, or fees.
 - D. There are open code violations or a history of code violations with respect to real property located in the County owned by the third-party purchaser.
 - E. Multiple property maintenance abatement cases or proceedings have been commenced with respect to real property located in the County owned by the third-party purchaser.
 - F. The property is located in an area that cannot be developed, redeveloped or improved due to environmental conditions including proximity to or location within an environmentally sensitive area such as a floodplain or wetland.
 - G. The property is dedicated open space and cannot be developed, redeveloped, or improved.

IV. **Sales to County.** For those properties for which the County is the winning bidder at the Sheriff's sale, the Acquisition and Disposition Team shall recommend one of three alternatives: (1) bid assignment; (2) bid rescission; or (3) County acquisition of the property subject to a specific disposition strategy.

A. *Bid Assignment.* Intended ownership of certain parcels may be designated by existing legal documents other than a deed. For example, open space designated on a record plan is, in most cases, designated for ownership by the community's maintenance corporation. The developer, typically organized as an artificial entity pursuant Delaware law, may have failed to transfer the deed and is now defunct or the corporate officers cannot be located. These parcels have limited uses and *de minimus* development potential. The Chief Financial Officer may assign winning bids for these types of parcels to the party designated for ownership or other appropriate party prior to confirmation. The Chief Financial Officer may assign a bid to a property that has development or redevelopment potential only pursuant to an Executive order identifying the specific public good that likely will result from the assignment.

B. *Bid Rescission.* Bids shall be rescinded in limited circumstances and only where: (1) the property condition likely will create legal liabilities; or (2) legal defects have been identified with the monition process. When possible, the Chief Financial Officer shall confer with the County Attorney on all rescissions within thirty (30) days of the date of the auction.

C. *Acquisition.* The County shall acquire all properties in which the bid has not been assigned or rescinded. The Acquisition and Disposition Team shall review each property and make a disposition recommendation based upon the disposition strategies contained herein.

V. **Disposition Strategies.** The Acquisition and Disposition Team may recommend any of the following strategies for property acquired through the monition process:

A. *Transfer to a Non-profit Organization.* The property may be transferred to a non-profit organization subject to the following conditions:

1. The property is located in a very low, low, or moderate-income Census Tract or is located in a market area where there is lack of affordable housing as identified by publications such as the *Delaware State Housing Authority's 2019 Market Value Analysis*, as that report may be updated from time to time.

2. *Capacity Questionnaire.* The Department of Community Services shall certify eligible non-profit organizations through a Capacity Questionnaire. The Capacity Questionnaire shall require information including:

a. the organization's experience in the redevelopment of vacant properties;

b. specific examples of experience in doing similar projects;

c. identification of full-time staff designated to work on the project;

d. evidence of funding necessary to complete the project;

e. proposed project timeline; and