

110-O-03

AN ORDINANCE

**Adding a New Chapter 20 to
Title 4 of the City Code, "Vacant Buildings"**

WHEREAS, buildings that are indefinitely vacant or indefinitely vacant and in a state of disrepair or boarded (collectively, "vacant buildings") are public nuisances in that they contribute to the decrease in value of surrounding properties, precipitate disinvestment by neighboring owners, provide a location for criminal activity, undermine the aesthetic character of the neighborhood and City, and have other undesirable effects; and

WHEREAS, vacant buildings, especially those which remain boarded for more than six (6) months, are unsightly and diminish neighboring property values and neighbors' sense of well-being, and are a public nuisance; and

WHEREAS, allowing certain buildings to remain indefinitely vacant even in the absence of Code violations or boarding is detrimental to the public health, safety, and welfare; unreasonably interferes with the reasonable and lawful use and enjoyment of other premises within the neighborhood; may pose an extraordinary danger to police officers or firefighters entering the premises in time of emergency; and detracts from the appearance and good order of the neighborhood; all of which effects are especially associated with such buildings which have been vacant for over two years; and

WHEREAS, registration of vacant properties and implementation of a maintenance plan will discourage property owners from allowing their properties to remain indefinitely

vacant or indefinitely vacant and in a state of disrepair and will thereby provide a basis for the return of vacant properties to the housing stock;

WHEREAS, the City of Evanston, as a home rule municipality, is empowered pursuant to Article VII, Section 6a of the 1970 Illinois Constitution to enact legislation pertaining to its “government and affairs”; and

WHEREAS, the definition, prohibition, and abatement of public nuisances pertain to the government and affairs of the City of Evanston; and

WHEREAS, the City has statutory power to define, prohibit, and abate public nuisances pursuant to 65 ILCS 5/11-60-2 of the Illinois Municipal Code; and

WHEREAS, the City Council, through its Planning and Development Committee conducted a fact-finding meeting on January 12, 2004, regarding the risks posed by the aforescribed buildings and their effect on the neighborhood, at that meeting and at other meetings heard citizens, elected officials, members of the City’s Police and Community Development Departments and an appraiser describe their experience and concerns posed thereby; and

WHEREAS, the City Council adopts the “broken window” concept among the rationales for this Ordinance; and

WHEREAS, the “broken window” concept is that one broken window, left unrepaired, leads to more broken windows as it gives the appearance that no one cares or protects the property; that that building becomes increasingly more deteriorated, and that the deterioration may have a ripple effect; and

WHEREAS, the abatement of nuisance caused by vacant buildings, repair and rehabilitation of vacant properties and their subsequent occupancy is in the best interests of the citizens of Evanston; and

WHEREAS, an ordinance providing for the declaration of certain boarded and/or vacant buildings as a public nuisance and providing for their abatement is a means for the City to use in maintaining sanitation and health standards, preventing crime, and avoiding fire, health, and safety hazards and minimizing or eliminating the effect such buildings have on the personal and economic well-being of the neighborhood,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the above recitations are found as fact and made a part hereof.

SECTION 2: That the Evanston City Code of 1979, as amended, be and it hereby is, further amended, by adding a new Chapter 20 to Title 4, "Vacant Buildings":

Section 4-20-1: Declaration of Policy.

The purpose of this Chapter is to protect the public health, safety, and welfare by enactment of this ordinance which:

- (A) Establishes a program for identification, registration, and regulation of buildings which are or become vacant on and after the effective date of this Chapter.
- (B) Determines the responsibilities of owners of vacant buildings.
- (C) Provides for administration, enforcement, including abatement of public nuisances, and imposition of penalties.

This Chapter shall be construed liberally to effect its purposes.

Section 4-20-2: Other Ordinances.

This Chapter shall not be construed to prevent the enforcement of other applicable ordinances, codes, legislation, and regulations which prescribe standards other than are provided herein, and in the event of conflict, the most restrictive shall apply.

Section 4-20-3: Definitions.

Unless otherwise expressly stated or clearly indicated by the context, the following terms shall, for the purpose of this Chapter, have the meanings indicated in this Section.

- (A) *Building*: Any structure occupied or intended for supporting or sheltering any occupancy.
- (B) *Dangerous building*: A building defined as a “dangerous, unsafe building” in Section 4-15-1 of the City Code, as it may be amended. Such buildings are public nuisances.
- (C) *Boarded Building*: A building which has had, in a manner intended to be temporary or permanent, any or all openings, which openings are windows or doors which were present for the purpose of light, ventilation or egress, some material whether opaque, solid or transparent, affixed to such openings, from the interior or exterior of the building, for the purpose of securing or preventing access or damage to the building or its components.
- (D) *Director*: The Director of Community Development or his or her designee.
- (E) *Unoccupied building*: A building or portion thereof which lacks the habitual presence of human beings who have a legal right to be on the premises, including buildings ordered vacated by the Director pursuant to authority granted to him by the Code.

In determining the whether a building is “unoccupied”, the Director may consider these factors, among others:

1. A building at which substantially all lawful residential or business activity has ceased.
2. The percentage of the overall square footage of occupied to unoccupied space or the overall number of occupied and unoccupied units shall be considered.

3. The building is substantially devoid of contents. The condition and value of fixtures or personal property in the building are relevant to this determination.
 4. The building lacks utility services, *i.e.* water, sewer, electric or natural gas.
 5. The building is the subject of a foreclosure action.
 6. The building is not actively for sale as part of a contractual agreement to sell the building, the building lacks “for sale”, “for rent” or similar signage.
 7. The presence or recurrence of uncorrected Code violations.
- (F) *Owner*: Any person, agent, operator, firm, or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county, or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.
- (G) *Person*: Includes a corporation, a partnership, or other entity as well as an individual.
- (H) *Premises*: A lot, plot or parcel of land including any structure thereon.
- (I) *Public Nuisance*: Includes the following:
1. The physical condition, or uses of any building regarded as a public nuisance at common law, under the Illinois Compiled Statutes, or under the Evanston City Code; or
 2. Any physical condition, use or occupancy or any building or its appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, and unsafe fences or structures; or
 3. Any building which has unsanitary sewerage or plumbing facilities; or

4. Any building designated by the Director as unsafe for human habitation or use; or
5. Any building which is manifestly capable of being a fire hazard, or manifestly unsafe or insecure as to endanger life, limb or property; or
6. Any building which is unsanitary, or which is littered with rubbish or garbage, or which has an uncontrolled growth of weeds; or
7. Any building that is dangerous, in a state of dilapidation, deterioration or decay; faulty construction; open or vacant and the doors, windows, or other openings are boarded up or secured, by any means other than conventional methods used in the design of the building or permitted for new construction of similar type; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and dangerous to anyone on or near the premises.
8. Any building defined as a “dangerous, unsafe building” by Section 4-15-1 of the City Code, as it may be amended.

(J) *Vacant building:* A building or portion of a building which is:

1. Unoccupied and unsecured; or
2. Unoccupied and secured by boarding or other similar means; or
3. Unoccupied and a dangerous structure; or
4. Unoccupied and condemned by the Director pursuant to applicable provisions of the City Code; or
5. Unoccupied and has multiple City Code violations; or
6. Unoccupied and the building or its premises has been the site of unlawful activity within the previous six (6) months; or
7. Condemned by the Director and unlawfully occupied; or
8. Unoccupied for over one hundred eighty (180) days and during which time the Director has issued an order to correct public nuisance

conditions and same have not been corrected in a code-compliant manner; or

9. Unoccupied for over two (2) years.

But not including:

Unoccupied buildings which are undergoing construction, renovation, or rehabilitation and which are in compliance with all applicable ordinances, codes, legislation, and regulations, and for which construction, renovation or rehabilitation is proceeding diligently to completion.

Section 4-20-4: “Vacant Building” Determination.

Within sixty (60) days after the effective date of this Chapter, the Director shall evaluate all buildings in the City he believes to be unoccupied on the effective date of this Chapter and make a determination for each as to whether the building is a “vacant building” within the meaning of Section 4-20-3. The Director may determine that a building which meets any of the criteria set forth in Section 4-20-3 (J) is not to be regulated under this Chapter for a stated period, if upon consideration of reliable, substantiated and sufficient evidence, he or she determines that regulation of the building under this Chapter would not serve the public health, welfare, and safety and makes written findings in support of his decision. The determination shall be in writing and shall state the factual basis for the determination. For buildings the Director determines to be “vacant buildings”, he shall, within seven (7) days of making that determination, send notice of his written determination with the factual findings to the last taxpayer of record listed on the most recent Cook County tax roll. Said notice of determination shall be sent first-class United States Mail, with proper postage prepaid. Failure of delivery shall not excuse a person from complying with this Chapter. The Director may personally serve or cause personal service of the notice of determination. Any person making such service shall execute an affidavit attesting to the facts of service. The Director shall maintain an affidavit of such mailing for each notice of determination sent.

The notice shall specify a date and time on which the owner shall allow for a Code Compliance inspection of the interior of the vacant building to determine the extent of compliance with City property, building codes, health, fire, water and sewer codes. The owner shall pay the \$500 inspection fee to the City within thirty (30) days of the inspection. An unpaid fee shall be a lien upon the premises.

The notice shall contain a statement of the obligations of the owner of a building determined to be a vacant building, a copy of the registration form the owner is required to

file pursuant to Section 4-20-6, and a notice of the owner's right to appeal the Director's determination.

Section 4-20-5: Appeal of Director's Determination of "Vacant Building".

- A. An owner of a building determined by the Director to be a vacant building as provided for in this Chapter may appeal that determination to the City Manager. Such appeal shall be in writing and shall be filed with the City Manager within fifteen (15) days of the date of mailing of the notice of determination. The filing of an appeal stays the owner's obligation to register his building as required by Section 4-20-6. The appeal shall contain a complete statement of the reasons the owner disputes the Director's determination, shall set forth specific facts in support thereof, and shall include all evidence the owner relies upon to support the appeal. The City Manager shall decide the appeal on the basis of facts presented by the owner in his or her written appeal and the Director's written determination.
- B. The burden is upon the owner to present sufficient evidence to persuade the City Manager that had the evidence been known to the Director at the time the Director made the determination, the Director would more likely than not have determined that the subject building was not a "vacant building" within the meaning of this Chapter.
- C. The City Manager shall send written notice of his decision to the owner within ten (10) days of his or her receipt of the appeal. The City Manager may, but is not required to, seek additional information from the owner. The City Manager may, upon written notice thereof to the owner, take no more than ten (10) additional days, to decide the appeal if he or she determines that such additional time is required for consideration of the appeal.
- D. An owner who wishes to challenge applicability of this Chapter to his/her building without the Director's determination having been made, shall set forth specific facts to support non-applicability in a writing to the Director. In the event the Director determines that the subject building is a "vacant building", the owner shall have the right to appeal the Director's determination to the City manager as provided for herein.

Section 4-20-6: Obligation to Register Vacant Buildings.

The owner of a building who knows, or from all the facts and circumstances should know, that his or her building is or has become a "vacant building" within the meaning of this Chapter after the effective date of this Chapter or the owner of a building, which the

Director determines at any time to be a “vacant building”, or the owner of a building whose appeal from the Director’s determination has been denied by the City Manager shall take the actions provided for in this Section 4-20-6 within fifteen (15) days after either the date of Director’s notice of determination or occurrence of the facts which would cause a reasonable person to believe that the building was a “vacant building”, or denial of the appeal, whichever is applicable. Registration does not exonerate the owner from compliance with all applicable Codes and ordinances, including this Chapter, nor does it preclude any of the actions the City is authorized to take pursuant to this Chapter or elsewhere in the City Code.

- (A) (1) (a) Register the building with the Director of Community Development, on a form provided by the Director and pay the \$200.00 annual non-prorated vacant building registration fee. The form shall include, as a minimum, the name, street address, and telephone number of the owner; the case name and number of any litigation pending concerning or affecting the building, including bankruptcy cases; and the name, street address, and telephone number of all persons with any legal interest in the building or the premises. The form shall require the owner to identify a natural person twenty-one (21) years of age or older who maintains a permanent address in Cook County, Illinois to accept service on behalf of the owner with respect to any notices the Director sends pursuant to this Chapter or service of process in any proceeding commenced to enforce any provision of this Chapter, and file with the Director on the registration form, the name, address, telephone number, of said person. A street address is required. A post office box is not an acceptable address.
- (1) (b) The form shall state that the owner, by affixing his or her signature, is advised that the City will not issue Real Estate Transfer Tax Stamps without City Inspectors having first conducted an interior inspection for Code compliance.
- (2) Renew the vacant building registration each year on the anniversary date of the first filing for the time the building remains vacant and pay the required \$200.00 annual fee; and
- (3) File an amended registration within fifteen (15) days of any change in the information contained in the annual registration. A new registration is required for any change in ownership whatsoever.
- (B) The form shall require the owner to indicate his or her “Acceptance of Notice by Posting” consenting to service of notices sent or required to be sent, pursuant to this Chapter, by posting on the building if the owner fails to renew the registration if

required, or maintain as current with the Director the information required regarding the person designated to accept notice and service of process;

The owner shall allow for a Code Compliance inspection of the interior of the vacant building and shall pay the \$500 fee therefore within thirty (30) days of the inspection.

Such inspection will determine the extent of compliance with City property, building codes, health, fire, water and sewer codes. The City shall send the inspection report to the owner within thirty (30) days.

- (C) Obtain liability insurance and maintain such insurance for as long as the building is vacant, and file evidence of such insurance with the Director, as follows: \$500,000 for a vacant residential building of one to three units; \$750,000 for a vacant residential building of four to eleven units; \$1,000,000 for a vacant residential building of twelve to forty-eight units; \$2,000,000 for a vacant residential building of more than forty-eight units; and \$2,000,000 for a vacant manufacturing, industrial, storage, or nonresidential commercial building; and
- (D) Vacant Building Plan. At the time a building is registered as required herein, the owner shall submit a vacant building plan. The Director may prescribe a form for the plan. If the owner fails to submit the plan as provided for by this Chapter, the Director may determine the plan. The plan shall contain the following as a minimum:
1. A plan of action to repair any doors, windows, or other openings which are boarded up or otherwise secured by any means other than conventional methods used in the design of the building or permitted for new construction or similar type. The proposed repair shall result in openings being secured by conventional methods used in the design of the building or by methods permitted for new construction of similar type with board removed. Boarding shall be accomplished with materials and methods described by the Director and available from the Director or on the City website, www.cityofevanston.org. The owner shall maintain the building in an enclosed and secure state until the building is reoccupied or made available for immediate occupancy. If the owner demonstrates that securing of the building will provide adequate protection to the public, the Director of Community Development may waive the requirement of an enclosure.
 2. For buildings and premises thereof which are determined by the Director as being or containing public nuisances, as defined in Section 4-20-3, then the vacant building plan shall contain a plan of action to remedy such public nuisance(s).

3. A time schedule identifying a date of commencement of repair and date of completion of repair for each improperly secured opening and nuisance identified by the Director.
 4. When the owner proposes to demolish the vacant building, then the owner shall submit a plan and time schedule for such demolition.
 5. A plan of action to maintain the building and premises thereof in conformance with this Chapter.
 6. A plan of action, with a time schedule, identifying the date the building will be habitable and occupied or offered for occupancy or sale. The time schedule shall include date(s) of commencement and completion of all actions required to achieve habitability. No plan which provides for compliance with this Chapter or, which will not, as determined by the Director, achieve such compliance, within six (6) months, in the case of a vacant boarded building, and two (2) years, in the case of a vacant, unboarded, and code compliant building will be approved.
 7. All premises upon which unoccupied or vacant buildings, are located and the exteriors shall at all times be maintained in compliance with the City Code.
 8. Exterior lighting according to standards established by the Director and available from the Director or on the City website: www.cityofevanston.org.
- (E) On written notice of the Director, provide bonded, licensed, and insured security guard service at the building between the hours of 3:00 p.m. and 8:00 a.m. Such service to remain in place until the Director gives written notice that the service is no longer required. Such service shall be required when the Director makes a written determination that the vacant building constitutes a fire hazard, is otherwise dangerous to human life or the public welfare, involves illegal or improper use, occupancy, or maintenance, under such conditions that boarding and securing the building are insufficient to prevent the actual or threatened harm.
- (F) Affixed to any building which is boarded, no smaller than 2' x 2' and compliant with the City's Sign Regulations Ordinance, Title 4, Chapter 12 of the City Code, and providing the following information: the name, address, and telephone number of the owner, and in addition, for buildings which are the subject of a foreclosure

action, the name, address, and telephone number of the plaintiff and the plaintiff's attorney, if any, in the foreclosure action. The sign must be placed so that its message is legible from the public way.

Section 4-20-7: Approval of Plan.

- (A) The Director shall review the proposed vacant building plan in accordance with the standards below. The Director shall send notice to the owner of the vacant building of his determination.
- (B) Standards for Plan Approval. In considering the appropriateness of a vacant building plan, the Director shall include the following in his or her consideration and shall make written findings as to each:
1. The purposes of this Chapter and intent of the City Council to minimize the time a building is boarded or otherwise vacant.
 2. The effect of the building and the proposed plan on adjoining property.
 3. The length of time the building has been vacant.
 4. The presence of any public nuisances on the property.
 5. The likelihood that the plan or portion(s) thereof will prevent or ameliorate the condition it is designed to address.

Section 4-20-8: Authority to Modify Plan, Right of Appeal.

The Director shall, upon notice to the vacant building owner, have the right to modify the vacant building plan by modifying the dates of performance, the proposed methods of action, or by imposing additional requirements consistent with this Chapter he or she deems necessary to protect the public health, safety, or welfare.

Section 4-20-9: Failure to Comply with Plan. Failure to have an approved plan within thirty (30) days of filing the registration form or failure to comply with the approved plan shall constitute a violation of this Chapter subjecting the owner of the building to penalties as provided in this Chapter and to any remedies the City may avail itself of as provided for herein and elsewhere in the City Code, including but limited to, an action to compel correction of property maintenance violations.

Section 4-20-10: Other Enforcement. The registration of a vacant building shall not preclude action by the City to demolish or to take other action against the building pursuant to other provisions of this Chapter, the City Code, or other applicable legislation.

Section 4-20-11: Real Estate Transfer Stamps. A premises upon which is situated a vacant building for which inspection fees or registration fees imposed pursuant to this Chapter have not been paid in full or is not eligible for City real estate transfer tax stamps. Unpaid fees shall be a lien upon the property.

Section 4-20-12: Certification. A Certificate of Code Compliance for Vacant Buildings issued by the Community Development Department and payment in full of all fees imposed pursuant to this Chapter are required prior to any occupancy of a vacant building.

Section 4-20-13: Time Restrictions—Vacant Buildings.

It is the policy of the City of Evanston that boarding is a temporary solution to prevent unauthorized entry into a vacant building and that boarded buildings are a public nuisance. A vacant building may not remain boarded longer than six (6) months unless an extension of that time is part of a plan approved by the Director.

A vacant building which is unboarded and Code-compliant and for which boarding is determined by the Director on the basis of police reports, citizen complaints, and other information of other type considered reliable by reasonable persons, to not require boarding to prevent unauthorized entry may not remain vacant for more than two (2) years without an approved plan for occupancy, sale, demolition, or other disposition of the building.

Section 4-20-14: Enforcement and Penalties.

- (A) Any person found to have violated any provision of this Chapter shall be subject to a minimum fine of \$100 per day per violation to a maximum of \$750 per day per violation, in addition to any other legal or equitable remedies available to the City. Such other remedies include, but are not limited to, injunctive relief, application to a court of competent jurisdiction for a receiver, demolition, or condemnation, contracting for the repair or purchase of the premises, or foreclosure of any lien the City may have thereon.
- (B) A separate and distinct offense shall be committed each day on which such person or persons shall violate the provisions of this Chapter.
- (C) The City may enforce this Chapter 20 in its Administrative Adjudication System or through the Court System. Administrative Adjudication shall be conducted in

accordance with the provisions of Title 11, Chapter 1 of the City Code, as it may be amended.

- (D) Nothing herein contained shall prohibit the City from immediately condemning as provided for in the City Code a building or taking other immediate action upon a determination that the building is a public nuisance or poses an imminent danger to the occupants of the building, or the public, health, safety and welfare.

Section 4-20-15: Severability.

In the event any Section of this Chapter or any part of any Section of this Chapter is declared to be unconstitutional, such decision shall in no way affect the operation of any other Section or part thereof the remainder of this Chapter shall remain in full force and effect.

SECTION 3: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Introduced: _____, 2003

Adopted: _____, 2004

Approved: _____, 2004

Mayor

ATTEST:

City Clerk
Approved as to form:

Corporation Counsel