

AN ORDINANCE TO AMEND CHAPTER 4 OF THE CITY CODE RELATING TO THE REGISTRATION OF VACANT PROPERTIES

#0441

Sponsor:

Council
Member
Cabrera

WHEREAS, City Council is committed to addressing vacant and abandoned properties and encouraging the development and return of such properties to productive use; and

WHEREAS, City Council believes increased registration fees for long-standing vacant properties will help to deter such property owners from allowing properties to remain vacant; and

WHEREAS, City Council believes the requirement for registration of vacant properties should be increased from forty-five (45) consecutive days to six (6) months to provide property owners with a longer period to remedy a vacancy before imposing registration requirements; and

WHEREAS, City Council believes commercial and industrial buildings that are intermittently occupied by the business-occupant should be subject to the vacant registration fee requirement; and

WHEREAS, City Council believes the abatement of delinquent vacant registration fees under certain conditions may incentivize the rehabilitation of vacant properties; and

WHEREAS, City Council desires to encourage the purchase of vacant properties from the Wilmington Neighborhood Conservancy Land Bank Corp. ("Land Bank") by billing purchasers of said properties a registration fee based on the duration of vacancy from the time they received the property from the Land Bank rather than based on the total number of years the property has been vacant; and

WHEREAS, City Council deems it necessary and proper to amend Chapter 4 of the City Code to effectuate these and certain housekeeping changes provided herein.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 4, section 4-27, 120.0 of the City Code is hereby amended by deleting the stricken language and adding the underlined language as follows:

Section 120.0. *Annual registration of vacant buildings and registration fees.*

(b) *Definitions and 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:

(C) *Occupied:* Any building or structure shall be deemed to be occupied if one or more persons actually conducts a substantial amount of lawful business in the building as the licensed business-occupant or if one or more persons actually resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient 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 commensurate with the stated occupancy of the building; 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.

(D) *Occupancy ready:* Any building that is vacant, but has been recently rehabilitated and a certificate of occupancy or certificate of completion has been issued by the DLI allowing the building to be lawfully occupied, or if the property has not been recently rehabilitated, the property meets all minimum code requirements and may be immediately occupied. Whether a building is "occupancy ready" shall be determined by DLI through an inspection of the building. The classification "occupancy ready" shall only apply to the vacant registration requirements of this section, and does not apply to any

other section of the code. The classification "occupancy ready" shall not apply to commercial or industrial buildings or structures that are intermittently occupied as defined in subsection (b)(1)(G).

(G) *Vacant:* A building or structure shall be deemed to be vacant if no person or persons actually, and currently conducts a substantial amount of lawfully licensed business in the building as the licensed business-occupant, or no person or persons actually, currently and lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, nontransient basis. As it relates to buildings that were previously occupied for commercial or industrial use, such a building or structure shall be deemed vacant if it is intermittently occupied by persons with the legal right to do so. For purposes of this section, proof of intermittent occupancy may include, but shall not be limited to, evidence that a substantial amount of lawful business activity is not occurring; minimum utility service usage; or business operations are conducted on less than twenty-five percent (25%) of the overall square footage of the building.

(2) *Applicability.* 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 6 consecutive days months and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 45 6 consecutive days months. 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 addresses of all owners, as hereinafter described, and any other information deemed necessary by the DLI. The registration fee(s) as required by subsection (b)(3) of this section shall be billed by the DLI and shall be paid by the first business day of January 4 of each year. For purposes of this section, the following shall also be applicable:

(3) *Registration statement and fees; local agent.* If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall 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, vacant and boarded, or vacant but occupancy ready and shall be required within 30 days of whenever any building has remained vacant for ~~45~~ 6 consecutive days months and within 30 days of a change in ownership of a building that has been vacant for at least 6 consecutive months 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 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 1 of each calendar year shall be responsible for the payment of the non-refundable registration fee, except buildings deemed "occupancy ready" by the DLI and actively for sale or lease shall be exempt from imposition of the annual registration fee. However, buildings deemed "occupancy ready" by the DLI shall only be exempt from imposition of the annual registration fee for no more than 2 consecutive billing cycles, unless the owner applies for and receives an extension of time as provided for in subsection (b)(7) below. Except as provided in subsections (b)(3)(A) and (B) below, said fee shall be billed by the DLI and based on the duration of the vacancy as determined by the following scale:

- (i.) No fee for properties that are vacant for less than one year;
- (ii.) \$500.00 for properties that are vacant for at least one year but less than two years;
- (iii.) ~~\$1,000.00~~ \$2500.00 for properties that are vacant for at least two years but less than three years;
- (iv.) ~~\$2,000.00~~ \$5,000 for properties that are vacant for at least three years but less than ~~five~~ four years;
- (v.) ~~\$3,500.00~~ \$10,000 for properties that are vacant for at least ~~five~~ four years but less than ~~ten~~ five years; and
- (vi.) ~~\$5,000.00~~ \$12,000 for properties that are vacant for at least ~~ten~~ five years, ~~plus an additional \$500.00 for each year in excess of ten years.~~

(A) The vacant registration fee billed to a housing provider meeting the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code and who receives a vacant building directly from the city or who receives public funds from the city for the acquisition, rehabilitation or redevelopment of a vacant building shall not be based on the duration of the vacancy prior to the non-profit housing provider receiving the vacant building from the city or receiving the funds from the city, but rather from the time it received

the vacant building or funds from the city. This provision shall be retroactive to May 1, 2003.

(B) The vacant registration fee billed to the purchaser of a vacant property directly from the Wilmington Neighborhood Conservancy Land Bank Corporation shall not be based on the duration of the vacancy prior to purchase, but rather from the time the purchaser received the vacant building from the Wilmington Neighborhood Conservancy Land Bank Corporation.

- (4) *Appeal rights.* The owner shall have the right to appeal the imposition of the registration fees to the Licenses and Inspection Review Board, upon filing an application in writing with the applicable \$50.00 ~~non-refundable~~ filing fee to the Department of Licenses and Inspections no later than 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, as defined in ~~125.0(b)(1)(C)~~ subsection (b)(1)(C) above. The \$50 filing fee will be refunded if the appeal is successful. Past due registration fees or registration fees from prior years that have been paid may not be appealed.
- (5) *One-time waiver of registration fee and extension thereof.* A one-time waiver of the registration fee, or an extension of a waiver for up to 12 months ~~from~~ from the date of the billing statement immediately following the expiration of the waiver, may be granted by the ~~Commissioner of Licenses and Inspections~~ the DLI upon application of the owner ~~and upon review and advice of the law department,~~ within 30 calendar days from the date of the bill for the registration fee, if the owner:
- (i) Pays all past due vacant registration fee(s); and
 - ~~(i.)~~ (ii) Demonstrates with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building, and objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or
 - ~~(ii.)~~ Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or
 - (iii.) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.
- (A) Past due registration fees may not be waived.

(B) With regard to an extension of a waiver only, the time period of the extension shall commence from the date of the billing statement (November 1 of the applicable calendar year) immediately following the expiration of the waiver and, in no event, shall the extension exceed 12 months. An extension of a waiver shall only be granted once. If the property is occupied, sold, demolished, or rehabilitated prior to the expiration of the extension, the registration fee shall be voided. If the property is not occupied, sold, demolished, or rehabilitated prior to the expiration of the extension, the owner is responsible for paying the registration fee billed.

(6) One-time ~~four-year~~ waiver of registration fee for non-profit organizations and extension thereof. Upon application by the owner and satisfaction of subsection (b)(5) above, the commissioner of the DLI may, upon advice and review of the law department, grant a one-time four year waiver of the registration fee, or an extension of a waiver for up to 12 months from the date of the billing statement immediately following the expiration of the waiver, if the owner meets the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code. With regard to an extension of a waiver only, the time period of the extension shall commence from the date of the billing statement (November 1 of the applicable calendar year) immediately following the expiration of the waiver and, in no event, shall the extension exceed 12 months. An extension of a waiver shall only be granted once. If the property is occupied, sold, demolished, or rehabilitated prior to the expiration of the extension, the registration fee shall be voided. If the property is not occupied, sold, demolished, or rehabilitated prior to the expiration of the extension, the owner is responsible for paying the registration fee billed.

(A) Past due registration fees may not be waived.

(7) 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 (b) (4) above, and the owner fails to pay the amount due said amount shall constitute a debt due and owing to the city, and the city may commence a civil action to collect such the unpaid debt.

Extensions of occupancy ready exemption. A one-year extension of the exemption from the annual registration fee for a property deemed occupancy ready may be granted by the commissioner of the DLI upon application of the

owner within 30 calendar days from the date of the bill for the registration fee immediately following the expiration of the exemption if:

(i) The owner provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period and will continue to do so; and

(ii) The property continues to meet all minimum code requirements for immediate occupancy as determined by the DLI through an inspection; and

(iii) The owner is current on all city obligations including, but not limited to, charges related to taxes, water, sewer, stormwater, permits, registration fees, business licenses, parking tickets, civil penalties and red-light tickets.

(A) The commissioner may grant up to two consecutive one-year extensions under this subsection. The owner must apply separately for each one-year extension.

(8) *Delinquent registration fees as a lien.* Except for registration fees that are the subject of a properly perfected appeal pursuant to subsection (b) (4) above, after the owner is given notice of the amount of the registration fee due, and the owner fails to pay the amount due said amount shall constitute a debt due and owing to the city, and the city may commence a civil action to collect such unpaid debt.

(9) *Penalty -- failure to pay fee.* The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to pay any registration fees required to be paid pursuant to the provisions of this section 30 days after the fee becomes due constitutes a violation of this section punishable by a civil fine as set forth in section 4-27, 114.4.1(b) of this chapter.

(e) *Abatement of delinquent vacant registration fees.* Upon application of the owner, the city, in its discretion, may enter into an agreement with the owner of a vacant property whereby the city agrees to void all delinquent vacant registration fees owed by the owner if the owner obtains a certificate of occupancy or certificate of completion for the property within one year of the date of the agreement such that the building may be lawfully occupied.

(1) *Eligibility.* At the time of application, the owner must provide the following documentation to the commissioner of the DLI:

(i) Proof that he or she owns the property; and

(ii) A detailed scope of the work required to obtain a certificate of

- occupancy or certificate of completion for the property; and
- (iii) Objective, satisfactory proof that he or she has adequate funds and/or financing to complete all work necessary to obtain a certificate of occupancy or certificate of completion within one year of the date of the agreement; and
- (iv) If applicable, satisfactory proof that a licensed contractor has been engaged to perform the required work; and
- (v) Satisfactory proof that the intended use of the property conforms with all zoning requirements; and
- (vi) The owner must be current on all other city obligations, including but not limited to charges related to taxes, water, sewer, stormwater, permits, registration fees, business licenses, parking tickets, civil penalties, and red-light tickets.

(2) If the owner satisfies subsection (e)(1), and the city enters into an agreement with the owner as contemplated by subsection (e), the city shall not file a monition action against the subject property for the length of the agreement. However, the delinquent vacant registration fees shall remain a lien against the property during this time.

(3) Delinquent vacant registration fees subject to the agreement contemplated by subsection (e) shall only be voided under this subsection if the owner obtains a certificate of occupancy or certificate of completion for the property within one year of the date of the agreement such that the building may be lawfully occupied. If the owner fails to obtain a certificate of occupancy or certificate of completion within the one-year period, the delinquent vacant registration fees remain liens on the property, and the property is subject to monition by the city.

(4) A decision by the city not to enter into an agreement under this subsection is discretionary and shall not be subject to appeal.

(f) *Failure to register.*

(1) *Penalties.* The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register or properly re-register a vacant building shall be assessed ~~a administrative penalties~~ civil fine in the amount of \$500.00. Failure to register ~~a vacant unit(s) building~~ within 30 days of receiving the \$500.00 penalty fine shall result in a \$10.00 per calendar day ~~penalty civil fine~~ for each unit building thereafter not properly registered. The ~~per-unit \$10.00 civil fine penalty~~ shall accumulate on a daily basis until such ~~penalty fine~~ is paid and the building is registered.

(2) *Notice of violation—Contents, service.* Whenever the commissioner of the ~~department of licenses and inspections~~ DLI or his designee determines that there has been a violation, or that there are reasonable grounds to believe that

there has been a violation, of the requirement to register a vacant property registration requirement of pursuant to this section or of any rule or regulation adopted pursuant thereto, he shall give notice of such violation or alleged violation to the person responsible thereof. Such notice shall:

- (i) Be put in writing;
 - (ii) Include a description of the real estate sufficient for identification;
 - (iii) Include a statement of the violation(s) and why the notice is being issued;
 - (v) Allow at least 30 days from the date of such notice for the property to be registered.
 - (vi) The notice of violation shall be served upon the owner, operator, and property manager, if applicable. Such notice shall be deemed to be properly served by mailing a copy thereof by certified mail, return receipt requested, to the property address, other address(es) that have been designated for the receipt of property tax bills for such property, the last known address of the property owner if different from the before-mentioned addresses, and the address of the property manager, if applicable. If the notice is returned "undeliverable" or circumstances otherwise indicate that service has not been effected, service shall be made by posting a copy of the notice of violation in a conspicuous place on or about the dwelling affected by the notice. The commissioner of the department of licenses and inspections may, in his or her discretion, require such notice to be served by delivering a copy thereof personally to such owner or such operator or by leaving a copy thereof at his usual residence in the presence of someone in the residence of suitable age and discretion who shall be informed of the contents thereof, as the circumstances may require.
- (3) Appeal Administrative appeal. The owner, operator or property-manager may appeal the notice to the board of license and inspection review. The issues on appeal are limited to 1) whether the person subject to the notice of violation is the owner of the property; 2) whether the property was required to be registered pursuant to this section; or 3) whether the property was properly registered. The appeal shall be in writing and filed within 30 calendar days after the issuance of the violation notice. Any appeal to the board of license and inspection review shall be accompanied at the time of filing with a fee of \$50.00, which will be refunded upon a successful appeal. The board of license and inspection review shall hear and decide appeals in accordance with its duly prescribed and promulgated rules, regulations and procedures.

- (4) Any owner, operator or property manager, as the case may require, who does not appeal the notice and does not perform the act or acts required under the notice, or who unsuccessfully appeals the notice and does not perform the act or acts required under the notice within the prescribed time period is in violation of this section and may be issued a civil fine pursuant to subsection 120.0(f)(1).
- (5) Pursuant to 25 Del. C. Ch. 29, any fines imposed for violations of this section shall give rise to a lien(s). The unpaid amounts of such fines may be added to local property tax billings for the property which was the subject of said violation.

SECTION 2. Chapter 4, section 4-27, 202.0 of the City Code is hereby amended by

adding the underlined language as follows:

Occupied: A building or structure shall be deemed to be occupied if one or more persons actually reside or live in the building as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or if one or more individuals, firms, corporations, partnerships, or other entities actually conducts a substantial amount of lawful business in the building or structure ~~operates an ongoing duly licensed business;~~ whether as the licensed business owner or tenant, in the subject building or structure. For purposes of this Code, evidence offered to prove that a building is 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, and cable television subscriber services commensurate with the stated occupancy of the building; the production of a current limitation of occupancy notification application ~~pursuant to this section by~~ to the department of licenses and inspections; proof of rental inspection; a valid city business license; or the most recent, federal, state, or city income tax statements indicating that the subject property is an occupied building for residential or nonresidential purposes.

Vacant: A building or structure shall be deemed to be vacant if no person or persons actually and currently resides or lives in the building as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or if ~~none of any~~ no individuals, firms, corporations, partnerships, or other entities actually operates an ongoing duly licensed business, whether as owner or tenant, in the subject building or structure. As it relates to buildings that were previously occupied for commercial or industrial use, a building or structure shall be deemed vacant if it is intermittently occupied by persons with the legal right to do so. For purposes of this section, proof of intermittent occupancy may include, but shall not be limited to, evidence that a substantial amount of lawful business activity is not occurring; minimum utility service usage; or business operations are conducted on less than twenty-five percent (25%) of the overall square footage of the building.

SECTION 3. This Ordinance shall become effective January 1, 2025.

First Reading.....June 6, 2024
Second Reading.....June 6, 2024
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk
Approved this ___ day of _____, 2024

Mayor

SYNOPSIS: This Ordinance makes the following amendments to Chapter 4, section 4-27, 120.0 entitled Annual Registration of Vacant Buildings and Registration Fees and section 202.0:

- Increases the registration fees for properties vacant two (2) or more years;
- Defines “vacant” to include commercial buildings that are intermittently occupied by the business-occupant and subjects such properties to the registration and fee requirements of this section;
- Establishes a program allowing delinquent registration fees to be voided if the owner obtains a certificate of occupancy or certificate of completion within one year;
- Lengthens the time period triggering the requirement to register a building from forty-five (45) days vacant to six (6) months vacant;
- Provides for two (2) one-year extensions to the exemption from vacant registration fees for properties deemed “occupancy ready”;
- Clarifies that past due vacant registration fees are not subject to the one-time waiver and appeal provisions;
- Clarifies that past due vacant registration fees must be paid in order to obtain a one-time waiver;

- With regard to an extension of a one-time waiver, clarifies that the vacant registration fee must be paid if the property is not occupied, sold, demolished, or rehabilitated prior to the expiration of the extension period;
- Clarifies that in subsection (f) (which addresses the failure to register a vacant property) the issues on appeal are 1) whether the person subject to the violation notice is the owner of the property; 2) whether the property was required to be registered; or 3) whether the property was properly registered;
- Removes the requirement for Law Department review of the commissioner's decision to grant a waiver of a vacant registration fee;
- Provides that individuals who purchase a vacant building directly from the Wilmington Neighborhood Conservancy Land Bank Corp. are billed a vacant registration fee based on the duration of vacancy from when they received the building from the Land Bank, rather than a vacant registration fee based on the total number of years the property has been vacant; and
- Provides that the \$50 filing fee for an appeal will be refunded if the appeal is successful.

FISCAL IMPACT: Assuming no change in property owner behavior, annual vacant property fee revenue is projected to increase by \$1.5 million, to a new total of \$2.4 million. However, as the legislation is intended to result in a reduction in vacant properties, actual revenues are expected to be less than this. On average, for every 10% reduction in vacant properties or vacant property payment compliance, additional revenue will be reduced by \$237,000. A 64% or greater reduction in vacant properties / payment compliance will result in a decrease in total revenue relative to the current fee structure. See the table below for details.

Reduction in Vacant Properties / Payment Compliance	Total Revenue	Revenue increase / (decrease) vs FY'23 actual
No reduction	\$2,368,518	\$1,526,101
10.0%	\$2,131,666	\$1,289,249
20.0%	\$1,894,815	\$1,052,398
30.0%	\$1,657,963	\$815,546
40.0%	\$1,421,111	\$578,694
50.0%	\$1,184,259	\$341,842
60.0%	\$947,407	\$104,990
70.0%	\$710,555	(\$131,862)
80.0%	\$473,704	(\$368,713)
90.0%	\$236,852	(\$605,565)
100.0%	\$0	(\$842,417)