



Ordinance 599

An ordinance amending chapter 209 of the Code of the Town of Elsmere by deleting the current version of chapter 209 and substituting in its place a new chapter 209 to provide for the registration of abandoned properties and the enforcement of the town building maintenance code by abandoned property owners.

Sponsored By: Mayor Steve Burg,
1st District Councilman John Jaremchuk.

First and Second Reading: July 09, 2015

Results: _____

Third and Final Reading: August 13, 2015

Results: _____

ORDINANCE 599

An ordinance amending chapter 209 of the Code of the Town of Elsmere by deleting the current version of chapter 209 and substituting in its place a new chapter 209 to provide for the registration of abandoned properties and the enforcement of the town building maintenance code by abandoned property owners.

WHEREAS, the present mortgage foreclosing crisis has serious negative implications for all communities trying to manage the consequences of properties that are abandoned, have defaulted mortgages, in foreclosure, foreclosed upon and/or mortgagee owned (hereinafter referred to as “registrable property”); and

WHEREAS, the Town of Elsmere (hereinafter referred to as “Elsmere”) recognizes an increase in the number of registrable properties located throughout Elsmere; and

WHEREAS, Elsmere is challenged to identify and locate the parties who can maintain these properties; and

WHEREAS, Elsmere finds that the presence of registrable property can lead to a decline in property value, create attractive nuisances and lead to a general decrease in neighborhood and community aesthetic; and

WHEREAS, Elsmere has already adopted property maintenance codes to regulate building standards for the exterior of structures and the condition of the property as a whole; and

WHEREAS, Elsmere desires to amend Elsmere’s code in order to establish a property registration process that will identify a contact person to address safety and aesthetic concerns to minimize the negative impacts and blighting conditions that occur as a result of being abandoned and the foreclosure process; and

WHEREAS, Elsmere has a vested interest in protecting neighborhoods against decay caused by registrable property and concludes that it is in the best interests of the health, safety, and welfare of its citizens and residents to impose registration and certification requirements of registrable property located within Elsmere;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

SECTION 1. Chapter 209 of the Code of the Town of Elsmere is hereby repealed in its entirety, to be replaced by a new Chapter 209 as provided for in this Ordinance.

SECTION 2. Chapter 209 of the Code of the Town of Elsmere shall read as follows:

CHAPTER 209. REGISTRATION OF ABANDONED OR FORECLOSED PROPERTY

1 – PURPOSE AND INTENT

It is the purpose and intent of Elsmere to establish a process to address the deterioration and blight of neighborhoods caused by an increasing amount of abandoned property and property with defaulted mortgages located within Elsmere, and to identify, regulate, limit and reduce the number of these properties located within Elsmere. It is Elsmere’s further intent to establish a registration program as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of registrable property.

2 – DEFINITIONS

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Registrable Property – means any abandoned property (as defined in this chapter) or real property located in Elsmere, whether vacant or occupied, that is encumbered by a mortgage in default, is subject to an ongoing foreclosure action by the mortgagee or trustee, is subject to an application for a tax deed or pending tax lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a property as “registrable” shall remain in place until such time as the property is no longer abandoned or the foreclosure action has been dismissed and any default on the mortgage has been cured.

Accessible Property/Structure – means a property that is accessible through a comprised/breached gate, fence, wall, etc., or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Annual Registration – shall mean 12 months from the date of the first action that required registration, as determined by the Elsmere Code Enforcement Department, or its designee, and every subsequent 12 months. The date of the initial registration may be different than the date of the first action that required registration.

Applicable Codes – means to include, but not be limited to, the Elsmere Zoning Code, the Property Maintenance Code, and the State, County and Elsmere Building and Fire Codes.

Abandoned Property – means:

- a) Properties that are accessible properties or have broken or severely damaged windows, doors, walls, or roofs which create hazardous conditions and encourage trespassing; or
- b) Properties that have one or more exterior doors (other than a storm door) or one or more windows where there is a sheet or sheets of plywood or other durable material covering the space intended for such door or window; or
- c) Properties cited for a public nuisance pursuant to the Elsmere Code Chapter 145; or
- d) Properties that endanger the public's health, safety, or welfare because the properties or improvements thereon are dilapidated, deteriorated, or violate minimum health and safety standards or lack maintenance as required by the applicable codes.

Enforcement Officer – means any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector or building inspector, or other person authorized by Elsmere to enforce the applicable code(s).

Foreclosure – shall mean the legal process by which a mortgagee, or other lien holder, terminates a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. This definition shall include, but is not limited to, public notice of default, a deed-in-lieu of foreclosure, sale to the mortgagee or lien holder, certificate of title and all other processes, activities and actions, by whatever name, associated with the described process. The process is not concluded until the property obtained by the mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

Local Property Management Company – means a property manager, property maintenance company or similar entity responsible for the maintenance and security of registrable real property within 20 driving miles of Elsmere's limits. Upon review of credentials the Town Manager, or his designee, may allow a non-local property manager to be listed.

Mortgagee – means the creditor, including but not limited to, trustees; mortgage service companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor’s rights, interests or obligations under the mortgage agreement.

Owner – means any person, legal entity or other party having any ownership interest, whether legal or equitable, in real property. This term shall also apply to any person, legal entity or agent responsible for the construction, maintenance or operation of the property involved.

Property Management Company – means a local property manager, property maintenance company or similar entity responsible for the maintenance of registrable real property.

Real Property – means any improved residential or commercial land, buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the limits of Elsmere.

Vacant – means any building or structure that is not legally occupied. Occupants of properties subsequent to a foreclosure sale without a valid lease are considered illegal occupants.

3 – APPLICABILITY

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to Elsmere above and beyond any other state, county or local provisions for same.

4 – ESTABLISHMENT OF A REGISTRY

Elsmere or its designee shall establish a registry cataloging each Abandoned Property or Real Property subject to foreclosure within Elsmere, containing the information required by this article.

5 – REGISTRATION OF DEFAULTED MORTGAGE REAL PROPERTY AND ABANDONED PROPERTY

- a) Any mortgagee who holds a mortgage on real property located within Elsmere shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor. Any owner of any abandoned property shall perform an inspection of the property to determine if it is classified as abandoned. The mortgagee or owner of any abandoned property shall, within ten (10) days of the inspection, register the property with the Elsmere Code Office or its designee, on forms or other manner as directed, and indicate whether the property is vacant

or occupied. A separate registration is required for each property, whether it is found to be abandoned or under foreclosure.

- b) Registration pursuant to this section shall contain the name, direct mailing address, a direct contact name, telephone number, and e-mail address for the owner of abandoned property, mortgagee, and the servicer, and the name and twenty-four (24) hour contact phone number of the local property management company responsible for the security and maintenance of the property.
- c) Mortgagees or owners who have existing registrable property on the effective date of this ordinance have 30 calendar days from the effective date to register the property with the Code Enforcement Department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is abandoned or under foreclosure.
- d) If the mortgage on a registrable property is sold or transferred, the new mortgagee is subject to all the terms of this article and within 5 days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new mortgagee or trustee and are due and payable with their initial registration.
- e) If the owner of a foreclosed or abandoned real property sells or transfers the property to a non-arm's length related person or entity, the transferee is subject to all the terms of this article and within 5 days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new registrable property owner and are due and payable with their initial registration.
- f) As long as the property is registrable it shall be inspected by the mortgagee, or designee, monthly. If an inspection shows a change in the property's occupancy status the mortgagee shall, within ten (10) days of that inspection, update the occupancy status of the property registration.
- g) A non-refundable annual registration fee established by resolution of the Elsmere Council shall accompany each registration pursuant to this section.
- h) All registration fees must be paid directly from the mortgagee, trustee, servicer, or owner. Third party registration fees are not allowed without the consent of Elsmere and/or its authorized designee.
- i) Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they are registrable.

- j) Until the mortgage or lien on the property in question is satisfied, or legally discharged, the desire to no longer pursue foreclosure, the filing of a dismissal of *lis pendens* and/or summary of final judgment and/or certificate of title, voluntary or otherwise, does not exempt any mortgagee holding the defaulted mortgage from all the requirements of this article as long as the borrower is in default.
- k) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.
- l) Failure of the mortgagee or owner of abandoned property to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement and any resulting monetary penalties.
- m) Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, Elsmere may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

6 – MAINTENANCE REQUIREMENTS

- a) Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
- b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- c) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.
- d) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- e) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.

- f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris, have pool covers and security fencing and shall comply with the regulations set forth in the applicable code(s).
- g) Failure of the mortgagee and/or owner to properly maintain the property may result in a violation of the applicable code(s) and issuance of a citation or Notice of Violation in accordance with the applicable code of Elsmere. Pursuant to a finding and determination by Elsmere's code enforcement officer, magistrate or a court of competent jurisdiction, Elsmere may take the necessary action to ensure compliance with this section.
- h) In addition to the above, the property is required to be maintained in accordance with the applicable code(s) of Elsmere.

7 – SECURITY REQUIREMENTS

- a) Properties subject to these sections shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- b) A “secure manner” shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child or animal to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.
- c) If a property is registrable, a local property manager shall be designated by the mortgagee or owner to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this article, and any other applicable laws.

8 – PUBLIC NUISANCE

All abandoned property is hereby declared to be a public nuisance, the abatement of which is hereby declared to be necessary for the health, welfare and safety of the residents of Elsmere.

9 – INSPECTIONS FOR VIOLATIONS

Adherence to this article does not relieve any person, legal entity or agent from any other obligations set forth in any applicable code(s), which may apply to the property.

10 – ADDITIONAL AUTHORITY

- a) If the enforcement officer has reason to believe that a property subject to the provisions of this article is posing a serious threat to the public health, safety and welfare, the code enforcement officer may temporarily secure the property at the expense of the mortgagee and/or owner, and may bring the violations before the magistrate as soon as possible to address the conditions of the property.
- b) The code enforcement officer or magistrate shall have the authority to require the mortgagee or owner affected by this section to implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.
- c) If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the code enforcement officer may have Elsmere abate the violations and charge the mortgagee or trustee or owner with the cost of the abatement.
- d) If the owner or mortgagee does not reimburse Elsmere for the cost of temporarily securing the property, or of any abatement directed by the code enforcement officer or magistrate, within thirty (30) days of Elsmere sending the owners, mortgagee or trustee the invoice, then Elsmere may lien the property with such cost, along with an administrative fee as determined in Elsmere's fee ordinance, to recover the administrative personnel services. In addition to filing a lien, Elsmere can pursue financial penalties against the mortgagee.

11 – OPPOSING, OBSTRUCTING ENFORCEMENT OFFICER; PENALTY

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the enforcement office in the discharge of duties as provided in this chapter shall be punishable as provided in the applicable code(s) or a court of competent jurisdiction.

12 – IMMUNITY OF ENFORCEMENT OFFICER

Any enforcement officer or any person authorized by Elsmere to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this article.

13 – ENFORCEMENT AND PENALTIES

- A. Enforcement – The requirements of this ordinance may be enforced as follows:
- 1) By citation for civil penalties pursuant or to appear in Justice of the Peace Court;
 - 2) By an action for injunctive relief, civil penalties, or both, through a court of competent jurisdiction;
 - 3) By exercise of Elsmere’s powers of eminent domain, or by condemnation and demolition, or by the nuisance abatement process;
 - 4) By revocation or temporary suspension of necessary permits and/or certificates or occupancy and/or licenses; and
 - 5) By any other process permitted at law or equity.

Use of one enforcement process or theory does not preclude Elsmere from seeking the same, different, or additional relief through other enforcement methods.

- B. Separate offenses. A violation of this ordinance shall constitute a separate offense for each day it shall continue or recur. Each condition which exists in violation of this ordinance is a separate violation.
- 1) Each day a property remains unregistered when required to be registered by this ordinance is a separate offense for each day it shall continue or recur.
 - 2) Each day a property is not inspected as required by this ordinance is a separate offense.
 - 3) Each day a property is not secured as required by this ordinance is a separate offense.
 - 4) Each day a condition violating the Town’s minimum housing codes or property maintenance codes exists on a property subject to registration under this ordinance is a separate offense.
- C. Persons responsible for violations. The owner, mortgagee, trustee or servicer, as those terms are defined in this ordinance, and their duly authorized officers, employees or agents employed in connection therewith who have assisted in the commission of the violation or failed to perform as required by the ordinance, shall be guilty of the violation.

SECTION 3 – AMENDMENTS

Registration and penalty fees outlined in this article may be modified by a resolution passed and adopted by the Elsmere Council.

SECTION 4 – SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5 – REPEALER

All ordinances or parts of ordinances in conflict herewith are, and the same are, hereby repealed.

SECTION 6 – CODIFICATION

It is the intention of the Town Council that the provisions of this ordinance shall become and be made part of the Town Code of Ordinances; and that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 7 – EFFECTIVE DATE

This ordinance shall take effect ten (10) days after final passage.

First and Second Reading
July 09, 2015

Third and Final Reading
August 13, 2015

Steve Burg, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

This Ordinance replaces the current Chapter 209 and meet the requirements of the company that the Town will contract with to run the registry. It ads registration for abandoned properties.

Fiscal Impact

NONE



Resolution 15 – 07

**A RESOLUTION SETTING THE FEES ASSOCIATED WITH REGISTERING
PROPERTIES IDENTIFIED IN ORDINANCE 599.**

Proposed By: Mayor Steve Burg
1st District Councilman John Jaremchuk

Results: Passed 6 In Favor, 1 Opposed

Resolution 15 – 07

A RESOLUTION SETTING THE FEES ASSOCIATED WITH REGISTERING PROPERTIES IDENTIFIED IN ORDINANCE 599.

WHEREAS, Ordinance 599 was adopted by the Mayor and Council on August 13, 2015; and

WHEREAS, Section 5, g, of Ordinance 599 requires that the Mayor and Council establish a non-refundable annual registration fee.

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL, THAT;

In compliance with Section 5, g, of Ordinance 599, the non-refundable annual registration fee to accompany each registration shall be \$500.00

RESOLVED BY THE MAYOR AND COUNCIL THIS 10th DAY OF SEPTEMBER, 2015

Steven Burg, Mayor

Joann I Personti, Secretary

Synopsis

Resolution 15 – 07

A resolution setting the fees associated with registering properties identified in Ordinance 599.

Fiscal Impact

The exact fiscal impact is not possible to determine until the number of properties required to register is identified. However, the ordinance will increase the amount the Town receive in registration fees.