

**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. Kleiner  
\_\_\_\_\_

Sec'd by Ald. Green  
\_\_\_\_\_

Date of Adoption 05-05-20  
\_\_\_\_\_

Index No: 80-20  
\_\_\_\_\_

| NAMES              | AYES | NOES | ABSTAIN | ABSENT |
|--------------------|------|------|---------|--------|
| Ald. Ramkissoon    | X    |      |         |        |
| Ald. Tobin         | X    |      |         |        |
| Ald. Kleiner       | X    |      |         |        |
| Ald. Johnson       | X    |      |         |        |
| Ald. Jean-Francois | X    |      |         |        |
| Ald. Burr          | X    |      |         |        |
| Ald. Green         | X    |      |         |        |
| Ald. Masi          | X    |      |         |        |
| Pres. Rodrigues    | X    |      |         |        |
| TOTAL              | 9    |      |         |        |

WHEREAS, the Common Council of the City of Middletown recognizes that properties subject to foreclosure action or foreclosed upon and vacant properties (hereinafter referred to as "Registrable Properties") located throughout the City lead to a decline in community and property value; create nuisances; lead to a general decrease in neighborhood and community aesthetic; create conditions that invite criminal activity; and foster an unsafe and unhealthy environment; and

WHEREAS, the Council recognizes that it is in the best interest of the public health, safety, and welfare to impose registration requirements for Registrable Properties located within the City to discourage Owners and Mortgagees of such properties from allowing their properties to be abandoned, neglected or left unsupervised.

NOW, THEREFORE, BE IT RESOLVED and ORDAINED by the Common Council of the City of Middletown:

Section 1. There is to be added to the Code of the City of Middletown a new Chapter 453, entitled "Vacant and Foreclosed Properties Registration" to read in its entirety as follows:

**CHAPTER 453. VACANT AND FORECLOSED PROPERTIES  
REGISTRATION**

### **Section 453-1. Purpose of this Chapter.**

It is the purpose and intent of the Council to establish a process to address the deterioration, crime, and decline in value of City neighborhoods caused by property with foreclosing or foreclosed mortgages located within the City, and to identify, regulate, limit and reduce the number of these properties located within the City. It has been determined that Owner-occupied structures are generally better maintained when compared to vacant structures, even with a diligent off-site property Owner. Vacant structures or structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintained, which contribute to blight, declined property values, and have a negative impact on social perception of the residential areas where they are located. It is the Council's further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are in Foreclosure or Foreclosed, and to provide a mechanism to avert foreclosure actions through timely intervention, education, or counseling of property Owners.

### **Section 453-2. 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:

***Default*** shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

***Enforcement Officer*** shall mean any law enforcement officer, code enforcement officer, fire inspector, building inspector, or other person authorized by the City to enforce the applicable codes.

***Evidence of Vacancy*** shall mean any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; past due Utility notices and/or disconnected Utilities; accumulation of trash junk or debris; abandoned vehicles, auto parts and/or materials; the absence of furnishings and/or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers and/or mail; statements by neighbors, passers-by, delivery agents or government agents; and/or the presence of boards over doors, windows or other openings in violation of applicable code.

***Foreclosure or Foreclosure Action*** shall mean the legal process by which a Mortgagee, or other lien holder, terminates or attempts to terminate 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. The legal 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.

**Mortgagee** shall mean the creditor, including but not limited to, trustees; mortgage servicing 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; or any other person or entity with the legal right to foreclose on the Real Property, excluding governmental entities.

**Owner** shall mean every person, entity, or Mortgagee, who alone or severally with others, has legal or equitable title to any Real Property as defined by this Chapter; has legal care, charge, or control of any such property; is in possession or control of any such property; and/or is vested with possession or control of any such property. The Property Manager shall not be considered the Owner.

**Property Manager** shall mean any party designated by the Owner as responsible for inspecting, maintaining and securing the property as required in this Chapter.

**Real Property** shall mean any residential or commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the City limits.

**Registrable Property** shall mean:

A. Any Real Property located in the City, whether vacant or occupied, that is encumbered by a mortgage subject to an ongoing Foreclosure Action by the Mortgagee or Trustee, has been the subject of a Foreclosure Action by a Mortgagee or Trustee and a Judgement has been entered, 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 "foreclosure" property as "registrable" shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm's length transaction or the Foreclosure Action has been dismissed; or

B. Any property that is "vacant" as defined in this Section, below.

**Registry** shall mean a web-based electronic database of searchable Real Property records, used by the City to allow Mortgagees and Owners the opportunity to register properties and pay applicable fees as required in this Chapter.

**Semi-Annual Registration** shall mean six (6) months from the date of the first action that requires registration, as determined by the City, or its designee, and every

subsequent six (6) months. The date of the initial registration may be different than the date of the first action that required registration.

***Utilities and Services*** shall mean any utility and/or service that is essential for a building to be habitable and/or perform a service necessary to comply with all City codes. This includes, but is not limited to, electrical, gas, water, sewer, lawn maintenance, pool maintenance, and snow removal.

***Vacant*** shall mean any parcel of land in the City that contains any building that is not lawfully occupied for a period of at least sixty (60) days. A building shall not be considered vacant if:

(1) The owner is engaged in ongoing, good faith attempts to rent, sell or renovate as evidenced by proof of attempted sale or lease via contract with a realtor or appropriate listing, or by procurement of appropriate permits or contracts for renovation; and

(2) Such attempts do not exceed a period of one (1) year, and

(3) The property is not exhibiting “evidence of vacancy” as that term is defined in this Section, above.

### **Section 453-3. Establishment of a Registry.**

There is hereby established a registry cataloging each Registrable Property within the City, containing the information required by this Chapter.

### **Section 453-4. Inspection and Registration of Real Property Under Foreclosure.**

A. Any Mortgagee who holds a mortgage on Real Property located within the City shall perform an inspection of the property upon default by the mortgagor as evidenced by the filing of a Foreclosure Action.

B. Within fifteen (15) days of the date any Mortgagee files a Foreclosure Action, the Mortgagee shall register the Real Property with the City Registry, and, at the time of registration, indicate whether the property is Vacant, and if so shall designate in writing a Property Manager to inspect, maintain, and secure the Real Property subject to the mortgage under a Foreclosure Action. A separate registration is required for each property under a Foreclosure Action, regardless of whether it is occupied or vacant.

C. Initial registration pursuant to this section shall contain at a minimum the name of the Mortgagee, the mailing address of the Mortgagee, e-mail address, telephone number and name of the Property Manager and said person’s address, e-mail address, and telephone number.

D. At the time of initial registration each registrant shall pay a non-refundable Semi-Annual Registration fee of five hundred dollars (\$500.00) for each property. Subsequent non-refundable Semi-Annual renewal registrations of properties and fees in the amount of five hundred dollars (\$500.00) are due within fifteen (15) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Defaulted properties, (3) post-closing counseling and Foreclosure intervention limited to Owner-occupied persons in Default, which may not include cash and mortgage modification assistance, and (4) for any related purposes as may be adopted in the policy set forth in this Chapter. Said fees shall be deposited to a designated account in the City's Finance Department to be utilized for the cost of implementation and enforcement of this Chapter.

E. Property inspected pursuant to Subsection A above that remains in Foreclosure shall be inspected every thirty (30) days by the Mortgagee or Mortgagee's designee. If an inspection shows a change in the property's occupancy status the Mortgagee shall, within fifteen (15) days of that inspection, update the occupancy status of the property registration.

F. If the mortgage and/or servicing on a Registrable Property is sold or transferred, the new Mortgagee is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the new Mortgagee shall register the property or update the existing registration. The previous Mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Mortgagee's involvement with the Registrable Property.

G. If the Mortgagee sells or transfers the Registrable Property in a non-arm's length transaction to a related entity or person, the transferee is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the Mortgagee was at the time registration was required, including, but not limited to, unregistered periods during the Foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous Mortgagee will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Mortgagee's involvement with the Foreclosed Property.

H. If the Foreclosing or Foreclosed Property is not registered, or the registration fee is not paid within thirty (30) days of when the registration or renewal is required pursuant to this section, a late fee equivalent to ten percent (10%) of the Semi-Annual Registration fee shall be charged for every thirty-day period (30), or portion thereof, the property is not registered and shall be due and payable with the registration.

I. This Section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the Mortgagee as well as any properties transferred to the Mortgagee under a deed in lieu of foreclosure or by any other legal means.

J. Properties subject to this Section shall remain subject to the Semi-Annual Registration requirement, and the inspection, security, and maintenance standards of this Section as long as the property remains Registrable Property.

K. Failure of the Mortgagee and/or property Owner of record to properly register or to modify the registration to reflect a change of circumstances as required by this Chapter is a violation of this Chapter and shall be subject to the penalties and enforcement provided by Section 453-7, hereinbelow.

**Section 453-5. Inspection and Registration of Real Property That Is Not Subject to a Mortgage In Foreclosure.**

A. Any Owner of Vacant property located within the City shall within fifteen (15) days after the property becomes Vacant, register the Real Property with the City Registry.

B. Initial registration pursuant to this Section shall contain at a minimum the name of the Owner, the mailing address of the Owner, e-mail address, and telephone number of the Owner, and if applicable, the name and telephone number of the Property Manager and said person's address, e-mail address, and telephone number.

C. At the time of initial registration each registrant shall pay a non-refundable Semi-Annual Registration fee of five hundred dollars (\$500.00) for each Vacant property. Subsequent non-refundable Semi-Annual renewal registrations of Vacant properties and fees in the amount of five hundred dollars (\$500.00) are due within fifteen (15) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Vacant properties, and (3) for any related purposes as may be adopted in the policy set forth in this Chapter. Said fees shall be deposited to a designated account in the City's Finance Department to be utilized for the cost of implementation and enforcement of this Chapter.

D. If the property is sold or transferred, the new Owner is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the new Owner shall register the Vacant property or update the existing registration. The previous Owner(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Owner's involvement with the Vacant property.

E. If the Vacant property is not registered, or either the registration fee or the Semi-Annual Registration fee is not paid within thirty (30) days of when the registration or Semi-Annual Registration is required pursuant to this Section, a late fee shall be equivalent to ten percent (10%) of the Semi-Annual Registration fee shall be charged for every thirty (30) day-period, or portion thereof, the property is not registered and shall be due and payable with the registration. This Section shall apply to the initial registration and registrations required by subsequent Owners of the Vacant property.

F. Properties subject to this Section shall remain subject to the Semi-Annual Registration requirement, and the inspection, security, and maintenance standards of this Section as long as the property is Vacant.

G. Failure of the Owner to properly register or to modify the registration to reflect a change of circumstances as required by this Chapter is a violation of this Chapter and shall be subject to the penalties and enforcement provided by Section 453-7, hereinbelow.

H. Properties registered as a result of this Section are not required to be registered again pursuant to Section 453-4, above.

#### **Section 453-6. Maintenance and Security Requirements.**

A. Properties subject to this Chapter shall be maintained and secured in accordance with all applicable codes of the City of Middletown and State of New York.

B. Properties subject to this Chapter shall also be maintained in a secure manner so as not to be accessible to unauthorized persons. 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 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, and the property has become vacant, a Property Manager shall be designated by the Mortgagee and/or Owner to perform the work necessary to bring the property into compliance with all applicable codes, and the Property Manager must perform regular inspections to verify compliance with the requirements of this Chapter, and all other applicable codes.

D. When a property subject to this Chapter becomes Vacant, it shall be posted with the name and twenty-four (24) hour contact telephone number of the Property Manager. The Property Manager shall be available to be contacted by the City Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays excepted. The sign shall be placed in a window facing the street and shall be

visible from the street. The posting shall be no less than eighteen (18) inches by twenty-four (24) inches and shall be of a font that is legible from a distance of forty-five (45) feet. The posting shall contain the following language with supporting information:

THIS PROPERTY IS MANAGED BY \_\_\_\_\_.  
AND IS INSPECTED ON A REGULAR BASIS.  
THE PROPERTY MANAGER CAN BE CONTACTED BY TELEPHONE AT \_\_\_\_\_, OR BY EMAIL AT \_\_\_\_\_.

E. The posting required in Subsection D, above, shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so that it is visible from the street or if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visible from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.

F. Failure of the Mortgagee and/or property Owner of record to properly inspect and secure a property subject to this Chapter, and post and maintain the signage noted in this section, is a violation.

G. The City Commissioner of the Department of Public Works 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, or other measures as may be reasonably required to help prevent further decline of the property.

H. 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 Commissioner of Public Works may, in his or her discretion, abate the violations and charge the Mortgagee or Owner with the cost of the abatement. A report of the cost and expense of doing said work shall be submitted to the City Treasurer and shall then become a lien against the property where said work was performed.

#### **Section 453-7. Penalties for offenses.**

Any person who violates any provisions of this Chapter shall, upon conviction thereof, be subject to a fine of not less than \$250 nor more than \$1,000 or by imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.



Section 2. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional or illegal by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Section 3. This Ordinance shall take effect immediately.