

Proposed General Bylaw

Registration and Maintenance of Abandoned or Foreclosed Buildings, Structures, and Properties

(A) Purpose; Enforcement Authority

The purpose of this bylaw is to help protect the health, safety and welfare of the citizens by preventing properties from becoming abandoned, protecting property values and neighborhood integrity, protecting the town's resources, avoiding the creation and maintenance of nuisances and ensuring the safe and sanitary maintenance of buildings. Vacant or abandoned buildings are at an increased risk for fire, unlawful entry and other public health and safety hazards. This bylaw will help secure the Town's public welfare by requiring all property owners, including lenders, trustees, and service companies and/foreclosed property, to properly maintain vacant or abandoned properties.

The Inspector of Buildings / Building Commissioner of the town has enforcement authority as to this bylaw.

(B) Definitions

- (1) Residential:
 - a. "Abandoned" as applied to residential buildings means a building or structure which is not being used or occupied as intended and shows visible signs of substantial physical distress, including, but not limited to, boarded-up or broken windows or doors, fire damage, collapsed roofs, exposure to the elements, susceptibility to unauthorized entry, disconnected utilities, the accumulation of trash, junk, and/or debris, or that appears to pose a risk to public safety, as determined by the Building Commissioner. Abandoned does not include a building that is unoccupied while undergoing renovations for which a valid building permit exists, or while undergoing repairs due to fire or other casualty or that is temporarily vacant due to seasonal absences.
- (2) Nonresidential:
 - a. "Abandoned" as applied to any building other than residential building shall mean any building or structure which is not legally occupied or has been wholly vacant for sixty (60) consecutive days, and shows visible signs of substantial physical distress, including, but not limited to, boarded-up or broken windows or doors, fire damage, collapsed roofs, exposure to the elements, susceptibility to unauthorized entry, disconnected utilities, the accumulation of trash, junk, and/or debris, or that appears to pose a risk to public safety, as determined by the Building Commissioner. Abandoned does not include a building that is unoccupied while undergoing renovations for which a valid building permit exists, or while undergoing repairs due to fire or other casualty or that is temporarily vacant due to seasonal absences.
- (3) "Town" means the Town of Walpole
- (4) "Commissioner" means the Building Commissioner/Inspector of Buildings of the Town of Walpole or his/her designee.
- (5) "Days" means consecutive calendar days.

- (6) “Foreclosed” means a property, placed as security for a real estate loan, as to which all rights of the mortgagor or his grantee in the property have been terminated as a result of a default of the loan.
- (8) “Local” means within twenty miles of the property in question.
- (9) “Mortgagee” means the creditor, including but not limited to service companies, lenders, in a mortgage agreement, or any successor in interest of the mortgagee’s rights, interests or obligations under the mortgage agreement.
- (10) “Property” means any real, property or portion thereof, located in the Town of Walpole, including but not limited to buildings or structures situated on the property.
- (11) “Property Enhancement Plan” (PEP): a Plan which will details the owner’s action steps that address all violations of this by law.
- (12) “Owner”: a person or entity who, alone or severally with others:
- i. has legal or equitable title to Property or has care, charge or control of any building, dwelling unit or parcel of land in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
 - ii. has legal right to possess an entire building on Property; or
 - iii. is a mortgagee in possession of any building on Property; or
 - iv. is an agent, trustee, receiver or other person appointed by the courts and vested with possession or control of a building on Property; or
 - v. Is an officer or trustee of an association of unit owners of a condominium or cooperative which is or is on Property.
- (14) “Legally Occupied”: Occupied in accordance with the provisions of the Massachusetts State Building Code.
- (15) “Structure”: A combination of materials for permanent or temporary occupancy of use, such as a building, bridge trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing sand, platform, swimming pool, shelter, pier, wharf, bin, fence, sign, gasoline pump, recreational court, or the like.
- (16) “Building”: Any structure used or intended for supporting or sheltering any use or occupancy; a structure enclosed within exterior walls or firewalls, built, erected and framed of a combination of any material, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition, “roof” shall include an awning or similar covering, whether or not permanent in nature and the word “building” shall be construed where the context requires as though followed by the words “or parts thereof.”

(C) Registration

(1) Abandoned Property: If a building or structure on Property is determined to be abandoned by the Commissioner, his office shall issue a written notice to the Owner(s) of the Property informing them of all conditions on the Property which must be corrected in order to remove the determination as abandoned. Upon provision of documentary evidence of correction of the conditions in such notice, the Commissioner shall inspect the Property and, so long as there is no other outstanding notice of abandonment for the Property, the Commissioner shall issue a certificate of compliance.

1. Not more than seven (7) days after the issuing of the notice of abandonment, the Owner(s) shall register the Property with the Commissioner on forms provided by the Building Department.

Any Property registered under this By-Law shall pay a registration fee if the Property is registered for more than ninety (60) days in a calendar year.

On or before October 15th of each calendar year, the Town shall send a billing statement, setting forth the annual registration fee, to the owner of the abandoned building or structure. The annual registration fee shall be set by the Board of Selectmen pursuant to G.L. c.40, §22F.

On or before November 15th of each calendar year the Owner of any abandoned building or structure which has been registered under this By-Law for a total of ninety (90) days in any calendar year shall pay to the Town an annual registration fee of one hundred (\$100.00) dollars to provide for cost recovery for inspection services provided by the appropriate Town departments.. Willful failure to pay the annual registration fee shall be a violation of this by-law, and the full fee shall be deemed an assessment against the Property and shall constitute a “municipal lien” on the Property in accordance with G.L. c.40, §58.

(2) Upon a Mortgagee becoming an Owner of a Foreclosed Property, said Mortgagee/Owner shall register same within thirty (30) days.

(3) All Owners of Abandoned and/or Mortgagee owned Foreclosed Property shall register such Property with the Commissioner on forms provided by the Building Department. If the Owner is a corporation or other entity with a principal place of business outside the Commonwealth of Massachusetts or an individual residing outside the Commonwealth, the Owner shall appoint an in-state agent authorized to accept service of process and other documents under this bylaw, such as a property manger or real estate professional.

a. Each registration shall state the owner’s and, if applicable, agent’s name, telephone number, residence or place of business and mailing address located within the Commonwealth of Massachusetts including name, street number, street name, city or town, and zip code; the residence or place of business address shall not be a post office box and shall further include authorization for the Building Commissioner, Police Chief, Fire Chief and Health Director or their designees to periodically inspect the exterior and interior of said property pursuant to Section (E) hereof.

- b. Each registration shall certify that the property has been inspected by the Owner and must identify whether the property is Abandoned or Mortgagee owned Foreclosed.
- c. Each registration shall designate and identify a local individual or local property management company responsible for the maintenance and security of the registered Property. Such identification must state the individual or company's name, direct telephone number, and residence or business address and local mailing address; the residence or business address shall not be a post office box.
- d. If, regardless of any determination as to abandonment, property has been foreclosed, the registration must be received by the Commissioner within seven days of the foreclosure.
- e. All property registrations pursuant to this section shall be valid for one calendar year from the date when the registration is received by the Commissioner.
- f. An annual application fee of one hundred dollars (\$100.00) shall accompany the registration form. Subsequent registrations and fees shall be due within thirty days after the date of the expiration of the previous registration. Willful failure to pay the annual registration fee shall be a violation of this bylaw and the full fee shall be deemed an assessment against the Property and shall constitute a "municipal lien" on the Property in accordance with G.L. c. 40, § 58. Subsequent registrations shall certify whether the property remains abandoned and/or remains in foreclosure, as the case may be.
- g. Any owner that has registered a property under this section shall report any change in information contained in the registration within ten days of the change.
- h. Once a building is no longer vacant or abandoned or is sold in order for the property to be occupied, the owner shall provide proof of sale or written notice and proof of lawful occupancy to the Commissioner, who shall notify Police, Fire, Water, Sewer and Health Departments of the submitted registration of vacant or abandoned / building as well as the re-occupancy of the building.

(D) Maintenance and Security Requirements

- (1) Properties subject to this bylaw must be maintained in accordance with the State Building Code as well as all State and local health, sanitary, and safety codes and regulations. The local owner or local property management company must inspect and maintain the property on at least a monthly basis for as long as the property is abandoned. The name and the 24 hour contact telephone number of the local owner or local property management company responsible for the maintenance must be posted on the front of the property so as to be clearly visible by the Commissioner or his/her designee from the street.
- (2) In accordance with state law, including but not limited to Massachusetts General Laws chapter 143 Sections 6-10 and 780 CMR 121.0, property that is abandoned must be safe and must be secured so as not to be accessible to unauthorized persons.

- (3) Compliance with this section does not relieve the owner of any applicable obligations set forth in code regulations, covenant conditions and restrictions, and/or homeowner's association rules and regulations.
- (4) A building owner and/or property manager shall submit to the Commissioner a Property Enhancement Plan (PEP), which will detail the owner's action steps that address all violations of this bylaw. The PEP must be approved by the Commissioner.

The adoption of a PEP shall not absolve the owner for financial penalties incurred prior to adoption.

(E) Inspections

The Building Commissioner, Police Chief, Fire Chief and the Health Director, or their designees shall have the authority to periodically inspect the exterior and interior of any building subject to this bylaw for compliance provided that reasonable efforts are made by the town officials to provide at least twenty-four (24) hours notice to the property owners or their designees, unless said official(s) shall deem that a safety emergency exists that shall require immediate response (MGL Ch. 148, sec. 4).. Findings are to be given to the Building Commissioner to determine what actions need to be taken. The Commissioner shall have the discretionary authority to recommend the immediate disconnection of utilities if a potential hazard is apparent that may be dangerous to life and limb is present.

(F) Penalties

Violations of any portions of this bylaw, including but not limited to failure to initially register with the Commissioner, failure to properly designate the name of a local individual or local property management company responsible for the maintenance and security of the property, and failure to maintain and/or to secure property in compliance with this bylaw, shall be punishable by a fine of \$100.00 per violation, with each day the violation continues constituting a separate violation. The Commissioner or his designee shall enforce all provisions of this bylaw and shall institute all necessary administrative or legal action to assure compliance. No enforcement action shall be instituted until at least seven (7) days following an order to remedy such violation, served upon an owner in person, by registered mail, return receipt requested, or by posting said notice at the site.

- (1) The penalties provided in herein shall not be construed to restrict the Town from pursuing other legal remedies available to the Town, including ,but not limited to, a civil action in a court of competent jurisdiction seeking equitable relief to enforce this bylaw.
- (2) The Commissioner shall have the authority to waive or reduce any of the penalties at his or her discretion.
- (3) In addition to any other remedies available to the Town, this bylaw may be enforced, in the discretion of the Commissioner, by non-criminal disposition pursuant to Section 21D of Chapter 40 of the Massachusetts General Laws. The non-criminal fine for each such violation shall be one hundred (\$100.00) dollars. The enforcing person for purposes of non-criminals disposition shall be the Commissioner and each day a violation continues shall be considered a separate violation.

(G) Unsafe Buildings:

If the Commissioner determines any building to be unsafe, the Commissioner may act immediately in accordance with the Massachusetts State Building Code to protect public safety. Furthermore, nothing in this bylaw shall abrogate the powers and/or duties of municipal officials to act pursuant to any general statutory authority, including, without limitation, M.G.L. c. 139, §§1 *et seq.* and M.G.L. c. 143, §§6 *ei seq.*

(H) Appeals

Any persons aggrieved by a decision issued hereunder may appeal said decision to the Zoning Board of Appeals in the Town within 21 days of said decision.

(I) Applicability

If any provisions of this bylaw impose greater restrictions or obligations than those imposed by any general law, special law, regulation, rule, ordinance, order or policy, then the provisions of this bylaw shall control.

(J) Regulatory Authority

The Commissioner shall have the authority to develop rules and regulations as he/she deems necessary to implement and enforce this bylaw.

(K) Severability

If any provision of this bylaw is held to be invalid by a court of competent jurisdiction, then such provisions shall be considered separately and apart from this bylaw's remaining provisions, which shall remain in full force and effect.

(L) Reporting

The Building Commissioner shall submit an annual report to the Board of Selectmen concerning the registration and maintenance of vacant or abandoned buildings and properties. The reporting may include any activity pursuant to this bylaw.

2/14/2012