

Chapter 137

VACANT PROPERTY REGISTRATION

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[HISTORY: Adopted by the City Council of the City of Fitchburg 12-20-2022 by Ord. No. 190-2022. Amendments noted where applicable.]

§ 137-1. Registration and maintenance of vacant, abandoned, foreclosed and foreclosing properties.

§ 137-1.1. Purpose and intent.

It is the intent of this chapter to protect and preserve public health, safety, and welfare in the City of Fitchburg and security and quiet enjoyment of occupants, abutters, and neighborhoods by:

- A. Requiring residential or commercial property owners, including lenders, trustees, and service companies, to register and properly maintain vacant, abandoned, foreclosed, or foreclosing residential or commercial properties; and
- B. Regulating the maintenance of vacant, abandoned, foreclosed, or foreclosing residential or commercial properties to prevent blighted and unsecured buildings.

§ 137-1.2. Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

ABANDONED BUILDING —

- A. A vacant building, the ownership responsibilities of which have been surrendered or relinquished, whether intentionally or by failure to occupy and maintain such property; or
- B. Buildings, structures, and premises for which the owner cannot be identified or located by delivery of certified mail at the last known or registered address, which persistently or repeatedly becomes unprotected or unsecured or which is or has been occupied by unauthorized persons.

DAYS — Consecutive calendar days.

DIRECTOR — The Director of Public Health or the Director's designee.

FORECLOSING — The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

INITIATION OF THE FORECLOSURE PROCESS —

- A. Taking possession of a residential property pursuant to MGL c. 244, § 1;
- B. Delivering the mortgagee's notice of intention to foreclose to the borrower pursuant to MGL c. 244, § 1; or
- C. Commencing a foreclosure action on a property in either the Land Court or Worcester Superior Court.

LOCAL — Within 20 driving miles distance of the property in question as this term applies to the local agent or property manager responsible for maintenance of the property.

MAINTAIN or MAINTAINED — Maintained in accordance with the Massachusetts State Sanitary Code, Massachusetts State Building Code, City ordinances and regulations, and fire codes. Under this chapter, a dwelling not secured which allows the entry of unauthorized persons is considered a dwelling which is not maintained.

MORTGAGEE — The creditor, including but not limited to, service companies, lenders to a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

MUNICIPAL HEARING OFFICER — The Board of Health or other designated municipal hearing officer.

OWNER —

- A. Every person, entity, service company, property manager or real estate broker, who alone or severally with others:
 - (1) Has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or
 - (2) Has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, 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
 - (3) Is a mortgagee in possession of any such property; or
 - (4) Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
 - (5) Is an officer or trustee of the association of unit owners of a condominium each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, this chapter shall not apply to a condominium association created pursuant to G.L. c. 138A¹ to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association.

1. Editor's Note: See Chapter 183A of the General Laws.

B. "Owner" also means any person who operates a rooming house or is a trustee who holds, owns, or controls mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process.

PROPERTY — Any real residential or commercial or mixed-use property or portion thereof, located in the City, including all buildings or structures situated on the property. For the purpose of this chapter, "property" does not include property owned by or subject to the control of the City or any of its governmental bodies, including the Fitchburg Housing Authority.

A. Commercial property means any property that is used, intended, or designed to be used for business related purposes rather than as a living space. As used in this chapter, commercial shall not include property classified by the Board of Assessors as an Industrial (i.e., Use Code 4) property.

B. Residential property means any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

SECURE, SECURED, or SECURING — Measures that assist in making the property inaccessible to unauthorized people and prevents unlawful entry or access to a dwelling or structure which conforms with the State Building and Fire Codes, including but not limited to:

A. Removal all material determined by the Director of Public Health, the Fire Chief, or Building Commissioner or their designee(s) to be dangerous in case of fire.

B. Securing and maintaining secure all floors accessible from grade utilizing one of the following methods so long as such method is approved by the Director of Public Health, Building Commissioner and the Fire Chief: a) secure all openings, including but not limited to windows and door openings, in accordance with the U.S. Fire Administration, National Arson Prevention Initiative Board Up Procedures, continuously until such time as the building is reoccupied; or b) provide twenty-four-hour watchman services continuously until such time building is reoccupied; or c) provide a monitored intruder alarm system at the perimeter of all floors accessible from grade continuously until such time as the building is reoccupied. Property owner shall notify the Director of Public Health, the Building Commissioner, the Police and Fire Chief that this method has been chosen to secure the building.

C. Maintain any existing fire alarms or sprinkler system unless written approval is obtained from the Fire Chief in accordance with MGL c. 148, § 27A, to shut off or disconnect said alarms or system.

D. Maintain utilities or submit a written plan detailing how the building will be maintained as a result of lack of utilities. Plans should include but are not limited to prevention of all plumbing and sprinkler system freezing and or any other systems within the dwelling to maintain protection to the building. Plans require written approval of the Director of Public Health, Building Commissioner, and Fire Chief or their designees.

VACANT —

A. Shall mean the following, except where the context clearly indicates a different meaning:

- (1) Any residential building in which no person lawfully resides in any part of the building;
- (2) A mixed-use building in which neither a licensed business nor a lawful resident exists; or
- (3) Any commercial building in which no person or entity actually conducts a lawfully

licensed business in such building.

B. This term shall not include unoccupied structures that are:

- (1) Undergoing construction, rehabilitation, or renovation that is proceeding without unreasonable delay caused by the owner or property manager;
- (2) Used or held for use by the property owner as a vacation or seasonal home and there are no code violations;
- (3) Physically secured and the subject of a probate action or other litigation in which ownership is contest.

§ 137-1.3. Exemptions.

The following vacant properties shall be exempt from the requirements of this chapter:

- A. Vacant property owned or controlled by a non-profit community development corporation, a nonprofit housing assistance or development organization recognized by the Regional Housing Network of Massachusetts or the Massachusetts Housing Finance Agency or MassDevelopment for purposes of developing or redeveloping affordable housing on the property;
- B. Vacant, abandoned, foreclosing, or foreclosed property listed by the Fitchburg Office of Community Development and Planning as a priority affordable housing development site;
- C. A detached single-family dwelling actively marketed by a licensed realtor or by the owner of record and listed for sale on the multiple listing service;
- D. Properties determined by the Health Department or Board of Health to not present a public health or safety hazard to the neighborhood.

§ 137-1.4. Vacant or abandoned buildings determination.

- A. The Director or designated inspector shall evaluate all buildings in the City that are believed to be vacant or abandoned and determine for each as to whether the building is a vacant building or abandoned building within the meaning of this chapter. The determination shall be in writing.
- B. Building that are determined to be vacant buildings or abandoned buildings, the Director or designated inspector shall send notice of the written determination to the owner of record. The notice of determination shall be sent both by certified and first-class United States Mail, with proper postage prepaid, or otherwise in the manner as is in the manner of service of all other ordinances of the City of Fitchburg. Failure of delivery shall not excuse a person from complying with this chapter. The Director or the Director's designated representative may personally serve or cause personal service of the notice of determination and shall execute an affidavit attesting to the facts of service. The Director or designated local inspector shall maintain an affidavit of such mailing for each notice of determination sent.

§ 137-1.5. Registration of vacant and foreclosing/foreclosed residential properties.

Within 30 days of a building becoming vacant or abandoned, each owner of a vacant or abandoned building shall register the building with the City by completing and submitting a registration form to the Board of Health on the form provided by the Board of Health. Registration must include, at minimum, the name, address and telephone number of each owner of the building, the street address of the building, and the

name and contact information of the local individual authorized to accept service of process on behalf of the owners, and who shall be designated as a responsible local agent. The local agent must be able to respond in person to any issues or emergencies that arise within two hours of being notified. Contact information must include a telephone number that is active 24 hours per day. Payment of a registration fee of \$100 shall be made at the time of registration in order for the registration to be deemed complete and in compliance with this chapter. Failure to timely register a vacant or abandoned building shall be a violation of this chapter.

§ 137-1.6. Annual registration and fees.

A. On the anniversary date of each vacant or abandoned or foreclosing or foreclosed property registration filed with the City, the owner shall pay an annual registration fee to cover the Board of Health's administrative cost of monitoring and ensuring the proper maintenance of vacant or abandoned buildings. The fees may also be utilized to fund proper maintenance of such buildings by the City of Fitchburg, which costs shall become a municipal lien on the property. The annual registration fee shall be based on the following schedule:

- (1) For properties that have been vacant for one year or more but less than two years: \$250.
- (2) For properties that have been vacant for two years or more but less than three years: \$2,500.00.
- (3) For properties that have been vacant for three years or more: \$3,500.00.

B. Except as provided below, failure to promptly pay the registration fee shall be a violation of this chapter, and the full fee shall be deemed an assessment subject to a lien on property.

§ 137-1.7. Limited waiver of registration fees.

Registration fees shall be waived and time limits in this chapter shall be tolled for any former owner-occupant of a residential building if the formerly owner occupied residential building is now vacant due to i) the illness or infirmity of the former owner-occupant; ii) active military duty of the owner-occupant or iii) a fire or other natural disaster rendering the property uninhabitable, provided that the former owner-occupant is working expeditiously to rehabilitate the property.

§ 137-1.8. Change in status.

Within 7 days of a change of the status of a vacant or abandoned building, due to the sale of the building, new occupancy or other circumstance, the owner shall notify the Health Department of such change of status in writing on a form provided by the Health Department.

§ 137-1.9. Annual billing statement.

Within 30 days of the anniversary date for each registration, the Director or the Director's designee shall send a billing statement, setting forth the required registration fee, to each owner of a vacant or abandoned building. The registration fee set forth in this chapter shall be due and payable no later than the anniversary date regardless of the delivery of receipt of such billing statement.

§ 137-1.10. Appeal.

Any owner assessed a registration fee under this chapter shall have the right to appeal the imposition of such fee to the Director upon the filing of an application in writing, no later than 15 calendar days after mailing of the billing statement. The appeal shall be limited solely to the issues of whether the building

is vacant or abandoned and how long the building has been vacant or abandoned. The owner shall have the burden of proof on appeal. Upon the proper filing of an appeal, payment of the registration fee shall be stayed pending the outcome of the appeal. A hearing shall be held within 30 days of the request for the same. The Municipal Hearing Officer shall preside over the hearing. The applicant shall have the right to present any and all evidence in support of the appeal. The Director shall have the right to present any and all evidence against the appeal. The Hearing Officer shall issue a written decision within 30 days of the hearing. The Hearing Officer's decision shall be final. Payment of the fee shall be due within 10 days of the Hearing Officer's decision which is adverse to the owner.

§ 137-1.11. Posting.

Within 15 days of the time a building is required to be registered under this chapter, the City shall require the owner to post a "no trespassing" sign on upon their building which is vacant or abandoned.

§ 137-1.12. Enforcement.

- A. Any person or entity violating this chapter by failing to register a vacant or abandoned building, failing to pay the registration fee, failing to comply with maintenance requirements or otherwise, shall be subject to a fine of \$300 dollars per offense. The City may establish a revolving fund under MGL c. 44, § 53e 1/2, to credit the Health Department with all or a portion of the fees, charges, or other receipts under this chapter. Each day that the owner is in violation shall constitute a separate offense.
- B. The Health Department shall have the right to enforce this chapter pursuant to the noncriminal disposition procedures set forth in MGL c. 40, § 21D, or, as applicable, Chapter 40U of the General Laws.
- C. If the Director or the Director's designee determines that a vacant or abandoned property presents an imminent health or safety hazard, the City of Fitchburg shall have authority to enter the premises and conduct the work necessary to address the identified hazard. The City may record a municipal lien on the property to recover the cost of completing such work.
- D. The Director may publish in a newspaper of general circulation in the City of Fitchburg the names of any or all owners who violate this chapter.

§ 137-1.13. Maintenance requirements.

- A. Properties subject to this chapter must be maintained in accordance with the applicable sanitary codes, building codes, city ordinances, and fire codes. The owner, local individual, or local property management company must inspect and maintain the property on a monthly basis for the duration of the vacancy and comply with all of the following requirements:
 - (1) In a location on the front of the property visible from the street, the property must be posted with the name and twenty-four-hour contact phone number of the local individual or property management company responsible for maintenance;
 - (2) Building appurtenances at vacant property, including but not limited to, finishing, roofs, windows, trim, gutters, downspouts, shutters, railings, guards, steps, awnings, canopies, signs, light fixtures, and fire escapes, must be securely attached so as not to cause a blighting condition and must be maintained free from significant, visible deterioration;
 - (3) Perishables, combustibles, flammables, trash, waste, debris, or other materials that could facilitate the travel of fire or attract rats, vermin, insects, or other animals shall be removed from

the interior of the property;

- (4) Vacant property fencing, sheds, garages, barns, retaining walls, or other accessory structures shall be maintained and structurally sound;
- (5) Maintain any existing fire alarms or sprinkler system unless written approval is obtained from the Fire Chief in accordance with MGL c. 148, § 27A, to shut off or disconnect said alarms or system. As may be required by the Fire Chief, file one set of space utilization floor plans for said building with the Fire Chief and one set of plans with the Commissioner;
- (6) Remove from the building, to the satisfaction of the Fire Chief, hazardous material as that term is defined in Chapter 21K of the General Laws, as that statute may be amended from time to time;
- (7) All fire protection systems shall be maintained in service in vacant buildings;
- (8) Secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board Up Procedures, or provide twenty-four-hour on-site security shall be provided within the building or within the complex wherein the building is located;²
- (9) Maintain liability insurance on the building and furnish the Director with a copy of said certificate of insurance; and
- (10) Vacant property that is left open and/or accessible shall be subject to entry by the city to ensure that the property has not become an attractive nuisance and to ensure that the property is locked and/or secured.

B. The Director or designee shall have the authority and the duty to inspect properties subject to this chapter for compliance and to issue citations for any violations. However, nothing in this chapter shall preclude the Fire Chief, Building Commissioner, or their designees from inspecting and enforcing state and local codes, bylaws, and ordinances under their jurisdiction.

C. The Director, Fire Chief, Building Commissioner, or designee shall have the authority to require the owner to implement additional maintenance, security, demolition, or other measures not specified in this chapter as may be required to prevent further decline or blight of vacant property or as may be required to prevent a fire, collapse, public safety hazard or other emergency situation.

D. If a building regulated hereunder is damaged by fire, the owner shall have 30 days from the date of the fire to apply for a building permit to start construction or demolition. Failure to do so will result in the property being deemed a vacant property and subject to the requirements of this chapter;

E. With the exception of one- and two-family residential units, vacant properties that are not required by code to be monitored shall provide the following, subject to the approval of the Commissioner, Fire Chief, or designee:

- (1) A monitored fire alarm system that detects smoke or heat on every level of the building;
- (2) A monitored intruder alarm system at the perimeter of all floors accessible from grade, continuously until such time as the building is reoccupied; and
- (3) With the approval of the Fire Chief, or designee, fire protection and fire alarm systems in vacant

2. Editor's Note: So in original.

buildings shall be permitted to be removed from service as provided in MGL c. 148, § 27A, and in lieu of these systems, a key box with key and code will be provided to the Fire Chief.

§ 137-1.14. Regulatory authority.

The Board of Health shall have the authority to promulgate administrative rules and regulations necessary to implement and enforce this chapter.

§ 137-1.15. Severability.

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

§ 137-1.16. When effective.

The provisions of this chapter are effective immediately upon passage and all provisions shall be enforced immediately.