

IN THE YEAR TWO THOUSAND AND SEVENTEEN

THIRTY-THIRD AMENDMENT TO CHAPTER 18 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF HOLYOKE, MASSACHUSETTS 1997

AN ORDINANCE

Be it ordained by the City Council of the City of Holyoke as follows:

SECTION 1. Section 18-35 entitled "Regulation of blighted and vacant buildings" of Article I entitled "In General" of Chapter 18 entitled "Buildings and Building Regulations" of the Revised Code of Ordinances of the City of Holyoke, Massachusetts, 1997, as amended, is hereby further amended by the following:

DELETING: Section 18-35 in its entirety.

ADDING in its place:

Sec. 18-35. - Regulation of blighted and vacant buildings.

- (a) *Purpose and declaration of policy.* It is hereby found and declared that there exist within the City of Holyoke numerous real properties which are in a blighted and/or vacant condition. Many of these properties are essentially abandoned. Some are in violation of multiple aspects of state and local building codes and sanitary codes. The owner of record is often a large financial institution located out of state, making enforcement of the code very difficult. These code violations include, among multiple other violations, unoccupied buildings susceptible to vandalism and/or open structures rendering them unsafe and dangerous, yards full of litter and trash, unlocked houses, un-shoveled snow that renders sidewalks impassable, and overgrown grass and bushes.

The existence of such blighted and vacant properties contributes to the decline of city neighborhoods. It is further found that the existence of such blighted and vacant properties encourage temporary occupancy by transients, drug users and persons engaged in criminal activity; adversely affect the economic well being of the city and the health, safety and welfare of the residents of the city; and create significant costs to the city by virtue of the need for constant monitoring and frequent boarding and securing.

It is further found that many of the blighted or vacant properties can be rehabilitated, reconstructed, demolished and/or reused so as to provide decent, safe and sanitary housing, or commercial facilities, and that such rehabilitation, reconstruction, demolition and/or reuse would eliminate, remedy and prevent the adverse conditions described above.

- (b) *Definitions.* For the purposes of this section, the following words, terms and phrases shall have the following meanings, unless the context clearly indicates otherwise:

Blighted premises shall mean any building, structure, parcel of land, or any part of a building or structure that is a separate unit, whether commercial or residential, in which at least one of the following conditions exist:

- (1) It is not being adequately maintained and secured as documented by the enforcement officer (as that term is defined herein) based upon, without limitation, the following factors: missing or boarded windows or doors; collapsing or missing walls, roof or floor; siding that is seriously damaged or missing fire damage; a foundation that is structurally faulty; accumulation of interior furniture outside, garbage, trash, junk, inoperable cars, boats, motorcycles or other inoperable machinery or other refuse (unless otherwise licensed to do so);
- (2) It has been cited for violations as documented by the building commissioner, the director of the board of health, the police chief, the fire chief and/or their designated agents, which violations have not been corrected;
- (3) It is attracting illegal activity as documented by the police department;
- (4) It is a fire hazard as documented by the fire department;
- (5) Because of fire, wind, or other natural disaster, or because of physical deterioration, it is no longer habitable as a dwelling or useful for the purpose for which it was originally intended;
- (6) Is a vacant building as defined hereunder; or
- (7) It is determined by the building commissioner and/or the director of the board of health that the building, structure or parcel of land is in a condition which poses a serious threat to safety, health, morals and general welfare of the city.

Building shall mean an independent structure having a roof supported by columns or walls, resting on its own foundations and designed for the shelter, housing or enclosure of persons, animals or property of any kind.

Enforcement officer shall mean the building commissioner and director of the board of health and/or their designated agents.

Initiation of the foreclosure process shall mean taking any of the following actions:

- (1) Taking possession of a residential property pursuant to M.G.L.A. c. 244 § 1;
- (2) Publishing the first notice of a residential property pursuant to M.G.L.A. c. 244 § 14; or
- (3) Commencing a foreclosure action on a residential property in either the land court or the county superior court.

Local agent shall mean an agent located within 20 driving miles distance of the property in question.

Owner shall mean any individual, business entity, voluntary association or nonprofit organization, and quasi-governmental entities, (i.e. Holyoke Housing Authority and Holyoke Gas & Electric Co.) which alone or jointly or severally with others:

- (1) Has legal title to any building, structure or property.
- (2) Has care, charge, or control of any such building, structure or property 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.
- (3) Is a lessee under a written agreement.
- (4) Is a mortgagee in possession of any such property, or
- (5) Is an agent, trustee or other person appointed by the courts and vested with possession or control of such building, structure or property.
- (6) Is a trustee who holds, owns or controls mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process. *Structure* shall mean anything erected at a fixed location on the ground to give support, provide shelter or satisfy other purposes (includes the term "building").

Vacant building shall mean any commercial or industrial building in which no person or entity actually conducts a lawfully licensed business in such building; or any residential building in which no person lawfully resides in any part of the building; or a mixed use building in which neither a licensed business nor a lawful resident exists. Further, any building lacking active water, heat or electrical utility service or in which more than one half of the total exterior windows and doors are broken, boarded or open without a functioning lock shall be deemed "vacant."

(c) *Creation or maintenance of blighted premises prohibited.*

- (1) No owner of real property located within the city shall allow, create, maintain or cause to be created or maintained any blighted premises.
- (2) *Administration.*
 - a. *Investigation.* The enforcement officer(s) shall undertake an investigation of any alleged violation of this section upon their own initiative or upon receipt of a complaint from any individual, civic organization or other governmental agency.
 - b. *Orders to take corrective action.* Upon a finding of a violation of the provisions of this section the enforcement officer shall serve notice of the violation and an order to correct such violation upon the owner of the property by certified mail or by service in hand by a person duly authorized to do such. The order shall require the owner to take one or more of the following actions to bring the property into compliance with the requirements of this section within no more than 30 days of receipt of such order:

1. To complete and file all required applications and any required plans for a permit for repair or rehabilitation of the building or structure and a detailed schedule indicating a completion date for such work or its various phases. All work performed pursuant to this subsection shall be completed within 180 days of the date that the order is received. In the case of large scale renovations or rehabilitation work over 10,000 square feet of work area, the schedule of time to complete the work may be extended in written agreement with the building commissioner;
 2. To file a completed application and any required plans for a permit for demolition of the building or structure and a schedule indicating a completion date for such work or its various phases. All work performed pursuant to this subsection shall be completed within 180 days of the date that the order is received; or
 3. To take any other action that the enforcement officer deems necessary to correct the violations of this section in order to assist the city in protecting the public health, safety and welfare of its residents.
- c. *Recovery of costs.* Whenever a property owner fails, neglects or refuses to make repairs or take other corrective action specified in the order, the city may undertake such repairs or actions, when in its judgment a failure to make them will endanger the public health, safety and welfare.

Notice of the intention of the city to make such repairs or other corrective action shall be served on the owner by certified mail or by service in hand by a person duly authorized to do such.

When repairs are made or other corrective action taken by the city, the cost of such repairs and enforcement action shall constitute a debt in favor of the city against the owner of the repaired building or structure. In the event that the owner fails, neglects or refuses to pay the city the amount of the debt within 30 days of the receipt of the notice of the debt, the city shall take action to collect the debt, which may include placing a lien on the property for such debt and/or initiating a civil action against the owner in a court of competent jurisdiction to recover the debt.

(d) *Registration of vacant buildings required.*

(1) *Registration.*

- a. Within 45 days of a building becoming vacant, each owner of such vacant building shall register said building with the city health department (hereinafter referred to as "the department"). All registrations must state the owner's name, mailing address and telephone number. The mailing address may not be a P.O. Box.
- b. If none of the owner(s) are at an address within the Commonwealth of Massachusetts, the registration shall also include the name, address and

telephone number of a person who resides within the Commonwealth of Massachusetts, who shall be designated as a responsible local agent for purposes of securing and maintaining the property, for purposes of notification in the event of an emergency affecting the public health, safety and welfare, and for service of any and all notices issued pursuant to this section.

- c. The failure to timely register a vacant building shall be a violation of this section.
- d. Once the property is no longer vacant or is sold, the owner must provide proof of sale or written notice of occupancy to the board of health.

(2) *Registration fees.*

- a. On or before October 15 of each calendar year, the department shall send a billing statement setting forth the required registration fee, to each owner of a vacant building and the address provided on the records of the City Assessor. However, the registration fee set forth in this section shall be due and payable on November 15 of each year regardless of the delivery or receipt of such billing statement.
- b. On or before November 15 of each calendar year, the owners of any vacant building shall pay to the department a registration fee to cover the administrative cost of monitoring and ensuring proper maintenance of such vacant buildings. The annual registration fee shall be based on the duration of the vacancy as of November 15 of such year according to the following schedule:
 - 1. Residential properties with one to three units, regardless of duration of vacancy—\$500.00 after one (1) year.
 - a. The foregoing shall not apply to temporary vacancy of one year or less due to vacation or pending probate transfer of property.
 - 2. Residential properties with four or more units and any other property:

\$0	Properties that have been vacant for less than one year.
\$1,500.00	Properties that have been vacant for one to two years.
\$3,000.00	Properties that have been vacant for two years or more

- c. A failure to pay timely the registration fee shall be a violation of this section and the full fee shall be imposed as a municipal charges lien on the property in accordance with M.G.L.A. c. 40, § 58, as voted by the city council. If the registration fee secured by the municipal charges lien remains unpaid at the time the Assessor is preparing the real estate list and warrant, said fee shall be certified and added to the next property tax bill to which the registration

fee relates in accordance with Section 82-6. of the Holyoke Code of Ordinances.

- d. Registration fees shall be expended for the purpose of defraying the regulatory and administrative expenses associated with monitoring, maintaining and remediating vacant properties.

(3) *Maintenance requirements.*

- a. Properties subject to this section shall comply with 780 CMR Section 116 et seq. "Standards for Making Buildings Safe and Secure" and shall be maintained in accordance with all other applicable sanitary codes, building codes, and local regulation.
- b. If the compliance method includes the boarding over of windows, doors, or other openings the U.S. Fire Administration National Arson Prevention Initiative Board Up Procedures must be followed as prescribed with the following exceptions: Clear polycarbonate (1/4" minimum thickness) shall be installed in place of any plywood type material and steel or composite material in place of wood dimensional lumber. No horizontal supports shall be installed on the exterior face of the polycarbonate material.
- c. The local owner or local agent must inspect and maintain the property on a monthly basis for the duration of the vacancy. The local owner or agent shall keep a written log indicating the date, time, conditions, repairs performed and owner/agent signature for each inspection. The inspection log shall be physically posted at the property or in other manner approved by the Board of Health.
- d. The property must contain a posting with the name and 24-hour contact phone number of the local owner or local agent responsible for the maintenance. This sign must be constructed of durable material, not less than twenty (20) square inches in size up to (144) square inches, and posted on the front of the property so it is clearly visible from the street.
- e. The local owner or local agent must maintain the exterior of the property free of trash, rubbish, garbage, debris and overgrown vegetation in accordance with provisions of the Holyoke Code of Ordinances and State Sanitary Code.

(4) *Appeal.*

- a. Any owner assessed a registration fee under this section shall have the right to appeal the imposition of such fee to the Vacant Building Registration Appeal Panel upon the filing of an application in writing with the Board of Health, no later than 15 calendar days after mailing of the billing statement, or if a billing statement is not mailed, then no later than November 15. Appeal shall be made on a form provided by the Holyoke Board of Health. Failure to submit a timely appeal or complete the appeal form as instructed shall constitute denial of the appeal.

- b. The Vacant Building Registration Appeal Panel shall consist of the Board of Health Director, Building Commissioner and Assistant City Solicitor or their respective designee.
- c. The appeal shall be limited solely to the issues of whether the building was vacant as of the date the registration fee was first due and payable under Section (d)(2)(A) and how long the building has been vacant. The owner shall have the burden of proof on appeal. If contesting the determination of vacancy, the owner shall demonstrate that the purported use constituted either a lawfully licensed business or lawful residential occupancy as of the date the registration fee was first due and payable.
- d. The Vacant Building Registration Appeal Panel shall establish written appeal procedures and forms not inconsistent with this section.
- e. Upon the proper filing of an appeal, payment of the registration fee shall be stayed pending the outcome on appeal. If the decision on appeal is adverse to the owner, the payment shall be due within ten calendar days of the board of health's decision.

(5) *Off-set*

- a. Any owner assessed a registration fee for property under Section (d)(2)(B)(2) herein may submit a written request to the Board of Health for a reduction in the registration fee owed for such year of vacancy in an amount equal to the greater of:
 - 1. the actual amount of any fees actually paid for the issuance of a building, electrical, or gas and plumbing permit obtained for the vacant property. The Owner shall have the burden of documenting payment of said fees.
 - 2. fifty percent (50%) of the registration fee due for such year upon demonstrating compliance with the maintenance requirements under section (d)(3) herein at all times during the applicable year of vacancy. This section shall not apply to a property which has been cited for any code violation during the applicable year of vacancy.
- b. The request for off-set must be received prior to November 15 of the year in which the registration fee is due.

(6) *Deferral and Waiver*

- a. The Building Commissioner may defer payment of the registration fee for a period no greater than one (1) year upon the property owner's timely submission of a rehabilitation plan approved by the Building Commissioner under this section.
- b. The deferral shall apply only to the registration fee due for the year in which the rehabilitation plan has been approved. Registration fees previously due and unpaid must be paid in full prior to approval of a rehabilitation plan and deferral of the current year's registration fees.

- c. The rehabilitation plan shall comply with the requirements of subsection (c)(2)(B)(1) and shall include a narrative of existing property conditions, list of repairs and schedule prioritizing the phases for completion of such repairs, dates certain for the application of required permits, dates certain for obtaining any applicable architectural or design plans, dates certain for the commencement and completion of said work and any other information or requirements specified by the Building Commissioner.
- d. The Building Commissioner shall issue a written determination indicating whether the rehabilitation plan has been approved and the effect of such approval, if any, on the deferral of outstanding vacant building registration fees.
- d. The local owner or agent shall provide written quarterly progress reports reporting activity at the property. The reports shall be submitted in a form and method agreed upon by the Building Commissioner and local owner or agent.
- e. During the deferral period, the outstanding registration fee balance shall remain a municipal charge outstanding on property but shall not be liened, added to the real estate tax bill, subject to additional interest or late fees, or preclude issuance of permits or licenses under Section 82-3.
- f. If the owner completes rehabilitation in accordance with the approved plan and the timeframe specified therein, the Building Commissioner shall waive the balance of deferred registration fees.

(e) *Penalties and enforcement.* This section shall be enforced by the building commissioner, the director of the board of health, the police chief, the fire chief or their designated agents.

Each separate offense of this section shall be punishable by a fine of \$100.00 for first offense, \$200.00 for the second offense and \$300.00 for the third and each subsequent offense. Each violation of any provision of this section shall be considered a separate offense and each day that any violation continues shall constitute a separate offense.

Upon failure to comply with any order issued under this section, the city may, in addition to other penalties and actions, bring civil or legal action against the owner to require compliance with the order.

The imposition of any fine shall not be constructed to prevent the enforcement of other laws upon the premises nor prevent the initiation of other enforcement measures or penalties. Failure to pay any fine arising from the enforcement of this chapter shall constitute a debt in favor of the city. The city may place a lien on the property for such debt/and or may initiate a civil action against the owner in a court of competent jurisdiction to recover the debt.

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

The provisions of this section are effective immediately upon passage and all provisions shall be enforced immediately, but no monetary fine shall be imposed pursuant hereto until 90 days after passage.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. This ordinance shall take effect upon passage.

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Crystal Barnes", is written over a horizontal line.

Crystal Barnes
Assistant City Solicitor