

Sponsor: \_Frankie Dale Rife \_\_\_  
First Reading: \_March 7, 2016\_\_\_  
Second Reading: November 7, 2016

Ordinance # 32-16

**AN ORDINANCE REQUIRING THE ANNUAL REGISTRATION OF VACANT BUILDINGS AND ESTABLISHING VACANT BUILDING REGISTRATION FEES**

WHEREAS, section 27 of the Wyoming Town Charter authorizes and empowers the Town to “enact ordinances or resolutions relating to any subject within the powers and functions of the Town, or relating to the government of the town, its peace and order, its sanitation, beauty, the health, safety, convenience and comfort of its population, and the protections and preservation of property, and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances or resolutions”;

WHEREAS, Title 25, Section 2901(a)(1)(j) of the Delaware Code creates a statutory lien against real property for any fee imposed by a municipal corporation “for registration of ownership of any vacant buildings located within the political subdivision” thereby implicitly authorizing municipalities to enact ordinances, including a corresponding fee, for the registration of vacant buildings;

WHEREAS, the Town Council has determined that the peace, order, sanitation, beauty, health, safety, convenience and property of the Town will be protected and improved by adopting an ordinance to require registration of vacant buildings and imposing fees for said registration;

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Wyoming, a majority thereof concurring in Council duly met, as follows:

**ANNUAL REGISTRATION OF VACANT BUILDINGS AND REGISTRATION FEES**

**Section 1. - Purpose.** The purpose of this Ordinance is to assist the town government in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the town, to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of the laws and ordinances of the Town of Wyoming.

**Section 2. - Definitions and applicability; registration statement and fees.**

(a) *Definitions.* For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:

- (1) *Boarded:* A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.

- (2) *Exterior maintenance and major systems:* The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, drive-way, if any, area of the lot, as applicable and as enforced by the department of planning and inspections
  - (3) *Occupied:* Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and/or sewer services; or the most recent, federal, state, or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of pre-rental inspection.
  - (4) *Open:* A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open, closed without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.
  - (5) *Owner:* An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.
  - (6) *Vacant:* A building or structure shall be deemed to be vacant if no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, non-transient basis.
  - (7) *Vacant, for sale or lease:* A vacant building or structure shall be deemed for sale or for lease if it is being actively marketed by a licensed real estate broker or owner who is regularly advertising the property in newspapers circulated in the Town of Wyoming, is offered at a price that is not more than 25 percent above the market value, and is in reasonable condition for sale or lease as determined by the town building official.
- (b) *Applicability.* The requirements of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 60 consecutive days and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 60 consecutive days. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, and any other information deemed necessary by the town. The registration fee(s) as required by subsection (c) of this section shall be billed by the town and shall be paid by September 30 of each year.
- (c) *Registration statement and fees; local agent.* If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and

secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for 60 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering. The owner of vacant property as of August 31 of each calendar year, as determined by the town assessment records, shall be responsible for the payment of the non-refundable annual registration fee. Said fee shall be billed annually by the town and based on the duration of the vacancy as determined by the following scale:

- (1) No fee for properties that are vacant for less than one year;
- (2) \$250.00 for properties that are vacant for at least one year but less than two years;
- (3) \$500.00 for properties that are vacant for at least two years but less than five years;
- (4) \$750.00 for properties that are vacant for at least five years, plus an additional \$250.00 for each year in excess of ten years.

The starting point for counting a building as being vacant shall begin on the effective date of this ordinance or such time thereafter that a building becomes vacant.

- (d) *Appeal rights.* The owner shall have the right to appeal the imposition of the registration fees to the Town Council, upon filing an application in writing with the applicable \$50.00 non-refundable filing fee to the town no later than 15 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy, as defined herein.
- (e) *One-time waiver of registration fee.* A one-time waiver of the registration fee may be granted by the Town Council upon application of the owner if the owner:
  - (1) Demonstrates with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building and objectively demonstrates an anticipated length of time that is reasonable for the demolition, rehabilitation, or other substantial repair of the vacant building; or
  - (2) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.
- (f) *Two-year waiver.* Upon application by the owner, the Town Council may grant a two-year waiver of the registration fee if the owner meets the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code.
- (g) *Delinquent registration fees as a lien.* After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to subsection (d) above, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the town and a lien against the property pursuant to 25 Del. C. § 2901(a)(1)(j), and the town may take those legal actions necessary to collect the unpaid debt.
- (h) *Duty to amend registration statement.* If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, former owner, responsible party or agent for the same to contact the town within 30 days of the occurrence of such change and advise the department in writing of those changes.
- (i) *Exceptions.* This section shall not apply to any building owned by the United States, the state, the town, nor to any of their respective agencies or political subdivisions.
- (j) *Violations; penalties.* The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due or the building becomes

classified as vacant, shall constitute a violation punishable by a fine in the amount of not less than \$100.00 nor more than \$500.00 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100.00 is imposed, it shall not be subject to suspension or reduction for any reason.

- (k) *Denial of demolition permit.* No demolition permit shall be issued for the demolition of any dwelling which is subject to the provisions of this Ordinance requiring the annual registration of such dwelling and the payment of vacant dwelling registration fees if, as determined by the town's code enforcement official, the dwelling has not been so registered or such registration fees have not been paid. Upon proper registration of such dwelling and payment of vacant dwelling registration fees, the town's code enforcement official may issue a demolition permit. Anything herein to the contrary notwithstanding, the town's code enforcement official may issue a demolition permit in an emergency, as determined by his/her own judgment, in order to protect the health, safety, and welfare of nearby residents, or if the town's code enforcement official determines that rehabilitation of such dwelling is not financially feasible. Issuance of a demolition permit under such circumstances shall not relieve the owner of any vacant dwelling registration fees that are owed or would have been owed had the dwelling been properly registered.
- (l) *Monitoring, inspection, and condition standards.* The town's code enforcement official shall inspect any building in the town for purposes of this section, and the owner of such building shall permit access to all parts of the interior upon request. The vacant building shall be secured at all times. The vacant building shall be kept in reasonable condition, all utilities shall be functional, there shall be no trash or debris inside or outside the building, and the building shall not be used as storage that is unrelated to its former use.
- (m) *Interpretation.* The Town Council shall have the authority to make determinations regarding the ownership and/or responsible party for any building determined to be vacant pursuant to this section.

**Section 3. - Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

**Section 4. - Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Town Council.

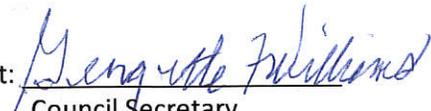
#### SYNOPSIS

This Ordinance requires all buildings in the Town of Wyoming that are vacant for more than 60 consecutive days to be registered with the town and pay a vacant building registration fee based on the length of time the building has been vacant. An owner may appeal to the Town Council the imposition of vacant building registration fees, and the Town Council may grant one-time waiver where a property is in the process of being sold, demolished, or rehabilitated. A non-profit is eligible to receive a two-year waiver. Except for in cases of emergency, a demolition permit may be denied where a building has outstanding building registration fees or was never registered with the Town as a vacant building. This

ordinance authorizes the town's code enforcement official to inspect vacant buildings and requires vacant buildings to be secured and free from trash and debris.

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This shall certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Wyoming at a duly-noticed and convened meeting at which a quorum was present on November 7, 2016.

Attest:   
Council Secretary

So certifies:   
Mayor

