

Introduced by: Councilmember Schultz

First Reading: March 23, 2016

Second Reading: April 6, 2016

Effective Date: July 1, 2016

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2016-13

**AN ORDINANCE REQUIRING THE REGISTRATION OF VACANT
PROPERTIES AND ESTABLISHING VACANT PROPERTY
MAINTENANCE AND SECURITY STANDARDS**

WHEREAS, the presence of vacant, abandoned, unsafe, and foreclosed properties can lead to neighborhood decline, create an attractive public nuisance, contribute to lower property values, and discourage potential buyers from purchasing a property adjacent to or in neighborhoods with the aforementioned properties; and

WHEREAS, the City of Takoma Park wishes to protect its neighborhoods from decline and devaluation; and

WHEREAS, the City of Takoma Park wishes to establish a vacant property registration program as a mechanism to protect residential and commercial neighborhoods from becoming blighted through lack of adequate maintenance and for the security of vacant and abandoned properties; and

WHEREAS, the Council shall review the vacant property registration program within two years following the effective date of this Ordinance to determine whether to continue or modify the vacant property registration program.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND:

SECTION ONE. Title 6, Housing, of the *Takoma Park Code* is amended by adding a new Chapter 6.38, Vacant Property Registration, as follows:

6.38.010 Purpose.

It is the purpose and intent of the City of Takoma Park, through the adoption of this Chapter, to establish a vacant property registration program as a mechanism to protect residential and commercial neighborhoods from becoming blighted through the lack of adequate maintenance and for the security of distressed properties and vacant properties.

6.38.020 Scope.

The provisions of this Chapter shall apply to all existing, residential, commercial, multi-family, industrial, and institutional properties and structures. This Chapter does not relieve an owner

from compliance with all applicable City ordinances and regulations or all applicable Montgomery County and State of Maryland laws and regulations.

6.38.030 Definitions.

“Beneficiary” means a lender or other entity under a note secured by a deed of trust or mortgage lien.

“Building” means a structure with a roof supported by columns or walls to serve as a shelter or enclosure.

“Default” means the failure to perform a contractual obligation, monetary or conditional.

“Distressed property” means a property that is under a current (1) pending foreclosure or tax lien sale; (2) properties that have been the subject of foreclosure sale where the title was retained by the lender or beneficiary of a deed of trust involved in the foreclosure; and/or (3) any properties transferred under a deed in lieu of foreclosure. “Distressed property” also can include property that is vacant as a result of probate or the death of the owner of record.

“Evidence of vacancy” means 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 include but are not limited to: overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk and/or debris; broken or boarded windows; abandoned vehicles and/or auto parts or materials; the absence of window coverings such as curtains, blinds and/or shutters; the absence of furnishings and/or personal items consistent with habitation; and/or statements by neighbors, passersby, delivery agents, or government employees that the property is vacant.

“Foreclosure” means the process by which a property, placed as security for a real estate loan, is sold through the courts at auction to satisfy the debt if the owner/borrower/mortgagor defaults.

“Lender/Mortgagee” means the person or entity who is the secured party under any mortgage or deed of trust instrument, or who has a fiduciary interest in the property, which can include the mortgage servicer.

“Notice of Default” means a notice that a default has occurred under a mortgage or deed of trust and that the beneficiary intends to proceed with a trustee’s or foreclosure sale.

“Owner” means any person, partnership, corporation, unincorporated association, limited liability entity, trust, personal representative of an estate, or fiduciary having legal or equitable title to or interest in any real property.

“Owner of record” means the person having record title to the property as shown in the Land Records of Montgomery County, Maryland.

“Property” means any unimproved or improved real property, or portion thereof, situated in the City and includes the buildings or structures located on the property regardless of condition.

“Responsible party” means the beneficiary that is pursuing foreclosure of a property subject to this Chapter secured by a mortgage, deed of trust or similar instrument or a property that has been acquired by the lender or beneficiary of a deed of trust involved in the foreclosure. Responsible party may also include a mortgage servicer or the property preservation company or property management company instructed with the security and maintenance of the property.

“Securing” means such measures as may be directed by the City Manager, or his or her designee, that assist in rendering the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/padlocking of gates, the repair or boarding of door, window and/or other openings. Boarding shall be completed to a minimum of the securing standards set forth in *Takoma Park Code* section 6.36.060.C, as amended, at the time the boarding is completed or required. Locking includes measures that require a key, keycard, tool or special knowledge to open or gain access.

“Vacant” means no person or persons currently conduct a lawful business or lawfully reside or live in any part of the building or structure as the legal or equitable owner(s) or tenant-occupant(s) on a permanent, non-transient basis. A property is vacant when there is no habitual presence of persons who have a legal right to be on the premises, or all lawful business or construction activity or residential occupancy has substantially ceased, or which is substantially devoid of contents. In the case of mixed-use buildings, a separate tenanted portion of the building which meets these criteria may also be deemed vacant.

“Vacant property” means a lot or parcel of real property with at least one building, structure, or portion that is not currently used or occupied for a period in excess of thirty (30) days. A building or structure that remains furnished, has utilities connected or in use, and on property that is maintained while the owner is absent shall not be considered vacant unless the building or structure is vacant for a period greater than one (1) year. A building or structure that is under active construction or undergoing active rehabilitation, renovation or repair, and there is a building permit to make the building fit for occupancy that was issued, renewed or extended within six (6) months of the date of vacancy shall not be subject to the vacant property registration requirement of this Chapter; provided, however, that the cessation of active construction, rehabilitation, repair or demolition activity for more than 30 days, unless good cause is shown for the cessation, will result in the property being deemed a vacant property and subject to the registration, security, and maintenance requirements of this Chapter.

A building that the owner or owner’s agent is actively trying to sell or rent (as evidenced by a sign posted on the property advertising the property for sale or rent with contact information and current telephone number, listing agreement with realty contact information, MRIS or MLS electronic listing, or other advertisement of sale or rent) shall not be considered a vacant property provided that the time period for sale or rent shall not exceed six (6) months from the initial listing, offer or advertisement of sale or rent. The exemption from the vacant property registration requirement for a building for sale or rent may be extended for one additional period upon a showing that the building

is still actively for sale or rent and provided that the building is in compliance with the vacant property maintenance requirements of this Chapter.

“**Vacant Property Registry**” means the official record of vacant distressed property and vacant property registered with the city in accordance with the requirements of this chapter.

6.38.040 Inspections of Distressed Property.

A. Prior to filing a complaint of foreclosure or notice of default or accepting a deed in lieu of foreclosure, the responsible party, or their designee, shall inspect a distressed property to determine whether the property is vacant. If the distressed property is found to be vacant or shows evidence of vacancy, the responsible party shall, within thirty (30) days, register the property as a vacant distressed property with the City for the purpose of minimizing hazards to persons and property as a result of the vacancy.

B. If a distressed property is occupied, but remains in default, it shall be inspected by the responsible party, or their designee, monthly until: (1) the default is remedied; or (2) the property is found to be vacant or shows evidence of vacancy. The responsible party or their designee shall, within thirty (30) days after obtaining knowledge of vacancy, register the property as a vacant distressed property with the City for the purpose of minimizing hazards to persons and property as a result of the vacancy.

6.38.050 Registration of Vacant Distressed Property.

A. The responsible party or their designee shall register a vacant distressed property by completing and submitting the Vacant Distressed Property Registration form and submitting the registration form to the City, along with the required fee.

B. The Vacant Distressed Property Registration form shall include the following:

1. The address of the vacant distressed property.
2. The name, current street/office mailing address (no post office boxes), telephone number, and email of all owners of the vacant distressed property.
3. The name of the responsible party, the street/office mailing address of the responsible party (no post office boxes), a responsible party direct contact name, telephone number and email, and the name, address, telephone number, and email of the property management company, field service provider, property preservation or real estate owned (REO) section or department responsible for inspecting, securing, and maintaining the property.
4. An explanation as to the reason for the vacancy of the property.

C. If a vacant distressed property is not registered, then the City may give the responsible party or their designee a written notice of vacancy and the responsible party or their

designee shall register the vacant distressed property with the City within thirty (30) days of receipt of a notice of vacancy from the City.

D. Registration of a vacant distressed property shall be valid and effective for a period not to exceed one (1) year, beginning July 1 and ending the next June 30, and shall be renewed annually thereafter until the property is no longer a vacant distressed property.

E. Vacant distressed property shall remain under the registration requirement, security and maintenance standards of to this Chapter so long as the property is distressed property.

F. The responsible party shall inform the City of any pending action, such as bankruptcy, probate or other court or administrative action, that would prohibit the responsible party from taking any of the actions required by this Chapter. The responsible party shall provide the City with complete information about any pending action that it alleges prevents the responsible party from complying with this Chapter, including the security and maintenance standards set forth herein.

G. Failure to register a vacant distressed property is a Class A municipal infraction offense.

6.38.060 Owner Registration of Vacant Property.

A. An owner of vacant property located in the City shall register the vacant property with the City within thirty (30) days of the vacancy. For good cause, the City may grant an owner of vacant property a reasonable extension of time to register the vacant property.

B. If a vacant property is not registered, then the City may give the owner of record a written notice of vacancy and the owner shall register the vacant property with the City within thirty (30) days of receipt of the notice of vacancy from the City.

C. Owners who are required to register their vacant properties pursuant to this Chapter shall do so by completing and submitting the Vacant Property Registration form to the City, along with the required fee. The Vacant Property Registration form may be signed by an agent for an owner provided the agent's written authorization from the owner is also provided. The Vacant Property Registration form shall include the following:

1. The name, current street/office mailing address (no post office boxes), telephone number, and email of all owners of the vacant property. If any owner of the vacant property is not the same as the owner of record, then an explanation of the reasons for the difference in ownership shall be provided.

2. The name of an individual or legal entity responsible for the care and control of the vacant property. Such individual may be the owner, if the owner is an individual, or may be someone other than the owner provided that the owner has contracted with such a person or entity to act as his or her agent for purposes of this Chapter.

3. A current street/office mailing address (no post office boxes), telephone number and email of the owner's agent, along with a direct contact name, telephone number, and email for the direct contact of the owner's agent.

4. A certificate of property insurance in an amount equal to or greater than the tax assessed value of the property.

5. An explanation as to the reason for the vacancy of the property.

D. Registration of a vacant property shall be valid and effective for a period not to exceed one (1) year, beginning July 1 and ending the next June 30, and shall be renewed annually thereafter until the property is no longer a vacant property.

E. Vacant property shall remain under the registration requirement, security and maintenance standards of this Chapter so long as the property is vacant.

F. The owner or owner's agent shall inform the City of any pending action, such as bankruptcy, probate or other court or administrative action, that would prohibit the owner or owner's agent from taking any of the actions required by this Chapter. The owner or owner's agent shall provide the City with complete information about any pending action that it alleges prevents the owner or owner's agent from complying with this Chapter, including the security and maintenance standards set forth herein.

G. Failure to register a vacant property is a Class A municipal infraction offense.

6.38.070 Fire Damaged Property.

If a building or structure is damaged in a fire or other casualty, the owner has ninety (90) days from the date of the fire or other casualty to apply for a permit to start construction, rehabilitation, repair or demolition and thirty (30) days after the date of permit issuance to commence construction, rehabilitation, repair or demolition of the fire damaged building or structure. Failure to do or the cessation of active construction, rehabilitation, repair or demolition activity for more than thirty (30) days, unless good cause is shown, will result in the property being deemed a vacant property and subject to the registration, security, and maintenance requirements of this Chapter.

6.38.080 Registration Fee.

The annual fee for registering a Vacant Distressed Property or a Vacant Property shall be \$200.00 payable to the City of Takoma Park and submitted to the City, along with the required registration form and all supporting information and documentation. Registration of a Vacant Distressed Property or a Vacant Property is for the fiscal year beginning July 1 and ending the next June 30. Unpaid registration fees shall be charged a late fee of 2% for each month or portion of a month that the registration fee remains unpaid. Registration fees are non-refundable and are not prorated in the event a registration fee is paid for a partial year. Unpaid registration fees are a lien on the property and may be collected in the same manner as taxes are collected.

6.38.090 Requirement to Keep Information Current; Removal from the Vacant Property Registry.

A. If at any time the information contained in the responsible party's Vacant Distressed Property Registration or the owner's Vacant Property Registration form is no longer valid, then the responsible party or owner, as applicable, has fifteen (15) days to file a new form containing valid, current information. There shall be no fee to update an existing registered responsible party's or owner's current information.

B. Should a vacant building become occupied at any time after registration of a vacant distressed property or a vacant property, then the responsible party or owner, as applicable, shall file an amended registration form within fifteen (15) days of occupancy notifying the city of such occupancy along with corroborating documentation and requesting that the building be removed from the vacant property registry. The city shall remove such building from the registry within thirty (30) days of the filing of the amended registration form, unless the city determines that there is evidence of vacancy and reason to believe that the building is vacant and subject to registration.

6.38.100 Vacant Property Maintenance and Security Requirements.

A. *Maintenance Requirements.* The responsible party of a vacant distressed property and the owner or owner's agent of a vacant property shall comply with the following maintenance requirements:

1. The exterior of the property shall be kept free of weeds, dry bush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is vacant and abandoned.

2. The property shall be maintained free of graffiti, tagging or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the structure.

3. All visible front and side yards shall be landscaped and properly maintained during the vacancy of the property. Landscaping includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings. Maintenance includes, but is not limited to cutting, pruning and mowing of required landscaped and removal of all trimmings.

4. Pools, spas, and other water features shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. Properties with pools and/or spas must comply with applicable security fencing requirements.

5. Adherence to the maintenance requirements of this section does not relieve the responsible party, owner or owner's agent of any obligations set forth in any Covenants, Conditions, and Restrictions and/or Homeowners Association rules and regulations which may apply to the property.

B. *Security Requirements.* The responsible party of a vacant distressed property and the owner or owner's agent of a vacant property shall maintain the property in a secure manner so as not to be accessible to unauthorized persons. All vacant property shall be deemed adequately protected from intrusion by trespassers and from deterioration by the weather if:

1. *Building openings:* Doors, windows, areaways and other openings are weather tight and secured against entry by birds, vermin, and trespassers. Missing or broken doors, windows and opening coverings are covered with at least one-half inch of CDX plywood completely painted in accordance with the predominant tone of the building, weather protected, tightly fitted to the opening and secured by screws or bolts.

2. *Roofs:* The roof and flashings are sound, tight, will not admit moisture, and drained to prevent dampness or deterioration in the walls or interior.

3. *Drainage:* The building gutters and downspouts are watertight and entire storm drainage system is adequately sized, installed in an approved manner, functional and discharged in an approved manner.

4. *Exterior Building Structure:* The building is maintained in good repair, structurally sound, free from debris, rubbish and garbage, and sanitary, walking surfaces and stairs are structurally sound, so as not to pose a threat to the public health or safety.

5. *Structural Members:* The structural members are free of deterioration and capable of safely bearing imposed dead and live loads.

6. *Foundation Walls:* The foundation walls are plumb, free from open cracks and breaks, and rat-proof.

7. *Exterior Walls:* The exterior walls are free of holes, breaks, and loose or rotting materials. Exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.

8. *Structure Extensions:* All balconies, porches, canopies, marquees, signs, metal awnings, cornices, stairways, fire escapes, standpipes, exhaust ducts and similar features are in good repair, anchored, safe and sound. Exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.

9. *Chimneys and Towers:* Chimneys, cooling towers, smokestacks, and similar appurtenances are structurally safe. Exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.

10. *Sidewalk Openings:* Yard, walks, steps, and openings in sidewalks are safe for pedestrian travel and snow and ice are removed from sidewalks adjoining the property.

11. *Accessory and Appurtenant Structures:* Accessory and appurtenant structures such as garages, sheds, and fences are free from safety and health hazards.

12. *Premises:* The premises on which a structure is located is clean, safe and sanitary, maintained free of weeds, junk vehicles, and litter, and does not pose a threat to the public health or safety.

C. *Inspections.* Vacant property and vacant distressed property required to be registered in accordance with this Chapter shall be inspected by the owner or owner's agent or by the responsible party on a monthly basis to determine if the property is in compliance with the requirements of this Chapter.

6.38.110 Posting of Notices.

Vacant property and vacant distressed property required to be registered in accordance with this Chapter shall be posted with the name and a 24-hour contact telephone number of the owner/owner's agent or responsible party, including any local property management company. The posting shall contain along with the contact name and contact telephone number, words substantially similar to "THIS PROPERTY PRESERVED BY _____" and "TO REPORT PROBLEMS OR CONCERNS CALL _____". The notice shall be placed on the interior of a window facing the street to the front of the property so it is visible from the street, or secured to the exterior of the front door or the building/structure facing the street to the front of the property so it is visible from the street. If no such area exists, then the notice may be posted in a location that is visible from the street to the front of the property but not readily accessible to vandals. Notices shall not be illuminated or exceed 8 ½ by 14 inches in size. Exterior postings must be constructed of and printed with weather resistant materials. The owner or owner's agent or the responsible party, property preservation company or property management company shall inspect the vacant or distressed property on at least a monthly basis to determine if the property remains in compliance with the notice posting requirements of this section.

6.38.120 Additional Authority.

In addition to the enforcement remedies established in this Chapter, the City Manager or his or her designee shall have the authority to require the lender/mortgagee and/or owner or owner's agent of any property affected by this Chapter, to implement additional maintenance and/or security measures including but not limited to, securing any and all doors, windows or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of on-site security guard or other measures as may be reasonably required to arrest the decline of the vacant property.

6.38.130 Violations and Enforcement.

A. If the City Manager or his or her designee determines that the vacant property or vacant distressed property is in violation of any provision of: (1) this Chapter; (2) Chapter 6.36, Unsafe Buildings--Public Nuisance Abatement; (3) Chapter 6.12, Property Maintenance Code; or (4) other *Takoma Park Code* provisions, then the City Manager or his or her designee shall notify

the owner/owner's agent or the lender/mortgagee/responsible party of the violation by providing notice of the violation to the person indentified in the Registration Application, and shall require the owner/owner's agent or the lender/mortgagee/responsible party to correct the violation.

B. A Notice of Violation shall include a description of the violation and, except for severe conditions where immediate action is needed to protect the public health and safety (*see* Montgomery County Code §26-15 incorporated as part of Chapter 6.36, Unsafe Buildings--Public Nuisance Abatement, by *Takoma Park Code* §6.36.020.C) or failure to secure the vacant property, shall provide a period of not less than twenty (20) days from the mailing or delivery of the notice for the owner/owner's agent or the lender/mortgagee/responsible party to remedy the violation. If the responsible party fails to remedy the violation within the stated period, the City may issue a citation for a Class A violation and impose penalties against the owner/owner's agent or the lender/mortgagee/responsible party for the violation.

SECTION TWO. This Ordinance shall be effective on July 1, 2016.

**ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND,
THIS 6TH DAY OF APRIL, 2016, BY ROLL-CALL VOTE AS FOLLOWS:**

AYE: Mayor Stewart, Councilmember Kovar, Councilmember Male, Councilmember Qureshi, Councilmember Seamens, Councilmember Smith, Councilmember Schultz

NAY: None

ABSENT: None

ABSTAIN: None