

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE CREATING A NEW ARTICLE VII, VACANT COMMERCIAL PROPERTY, UNDER CHAPTER 14, HOUSING, DWELLINGS, AND BUILDINGS, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE

BE IT ORDAINED, by the City Council of the City of Fayetteville, that:

Section 1. Chapter 14 is amended to regulate vacant properties within the City's Primary Fire District by creating a new Article VII, vacant commercial property, as follows:

ARTICLE VII. VACANT COMMERCIAL PROPERTY

14-133. Intent and scope.

It is the purpose and intent to establish a vacant commercial property ordinance as a mechanism to ensure public safety within Fayetteville's Primary Fire District and to minimize the risk of damage from fire, flooding, or other hazards of vacant commercial properties, and to deter crime and theft of materials from vacant commercial properties. Additionally, the city desires to preserve the historic integrity of Fayetteville's Downtown Historic District and to keep the commercial properties in the Primary Fire District from becoming blighted through the lack of adequate maintenance and security of abandoned and vacant properties, to minimize the loss of property value to vacant properties and surrounding occupied properties, and to promote the comfort, happiness, and emotional stability of area residents. The city finds that the presence of properties exhibiting evidence of vacancy pose special risks to the health, safety, and welfare of the community and therefore require heightened regulatory attention. The provisions of this article shall apply to all properties in the Primary Fire District of the City of Fayetteville.

14-134. Definitions.

For the purposes of this article, certain words and phrases used in this article are defined as follows:

Days means consecutive calendar days.

Evidence of vacancy means any aesthetic 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 or dead vegetation; extensively chipped or peeling exterior paint, exterior walls in poor condition, porches and steps in poor condition, roof in poor condition, broken windows, and other signs of general disrepair; accumulation of newspapers, circulars, flyers or mail; past due utility notices or disconnected utilities; accumulation of trash, junk, or debris; the absence of window coverings such as curtains, blinds, or shutters; the absence of furnishings or personal items consistent with

commercial habitation; and/or statements by neighbors, passersby, delivery agents, and/or government employees that the property is vacant.

Government agency means any public body having authority over the property and residents of the city, including, but not limited to, the City of Fayetteville, Cumberland County, Fayetteville Police Department, Fayetteville Volunteer Fire Department, and Cumberland County Sheriff's Office.

Government official means any public official representing a public body which has authority over the property and residents of the city, including, but not limited to, the City Manager, Development Services Director, Police Chief, Fire Chief, Fire Marshal, City Council or Mayor.

Local means located within 40 road or driving miles distance of the subject property.

Nonresidential property means any real property used or intended to be used for anything other than residential property as defined herein.

Out of area means located in excess of 40 road or driving miles distance away from the subject property.

Owner means the person, persons, or legal entity that holds legal title to a commercial property, or the property owner heirs, persons, or legal entity that is exercising ownership control of a commercial property.

Primary Fire District means the zoning designated Primary Fire District, as defined in the ordinance as the Primary Fire District.

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.

Residential property means a building, or portion thereof, designed exclusively for residential occupancy, including one-family, two-family, multiple dwellings, mobile homes, house trailers, boarding and lodging houses, apartment houses, and apartment hotels.

City means the City of Fayetteville corporate limits and its extra territorial jurisdiction.

Utilities means water, sewer, telephone, natural and propane gas, and electricity services.

Vacant means a building which lacks the habitual presence of human beings who have a legal right to be on the premises, lacks utility services for a period of six months or more, has been ordered vacated by a code official, and/or at which substantially all lawful business operations or residential occupancies have ceased.

Legally occupied means occupancy by the owner or any business or individual whose presence therein is with the consent of the owner with utilities furnished to the property.

14-135. Penalty for Violation of Article Provisions

If any owner or other person responsible under this article, after being notified by the Development Services Department or the board, shall allow to continue any condition, with respect to any vacant commercial property, prohibited by or not complying with this article, or any provision thereof, and such violation shall be a civil penalty for the amounts listed in Sec. 14-142, collectible in the nature of a debt per G.S. 160A-175, and each day's continuance of any such condition shall constitute a separate offense.

14-136. Registration.

(a) Any vacant property located within the Primary Fire District must be registered by the owner with the Development Services Department either (1) by the owner's own accord before receiving a Notice of Registration Requirement, or (2) within 30 days of the owner receiving a Notice of Registration Requirement from the city.

(b) The city will send a Notice of Registration Requirement to the owner of record of properties that exhibit evidence of vacancy. The owner shall register property within the time period set forth in paragraph (a) of this section unless the owner can provide clear and convincing evidence to the Development Services Director or his designee, within such time period, that the property is not vacant.

(c) The registration shall contain:

(1) The name of the owner (corporation or individual);

(2) The direct street/office mailing address of the owner and post office box if applicable; and

(3) A direct contact name and phone number.

(d) Any changes in the information in paragraph (c) of this section shall be reported to the Development Services Department within 30 days of such changes.

(e) Registration must be renewed annually.

(f) Vacant properties shall remain subject to the annual registration, maintenance, and security requirements of this article as long as they remain vacant.

(g) Once the property is no longer vacant or is sold, the owner must provide written proof of occupancy or sale to the Development Services Department.

(h) Registration of a vacant commercial property does not excuse the owner from compliance with any other applicable ordinance, regulation, or statute, without limitations, including Chapters 14 and 30. By accepting an owner's registration, the department has not determined that the vacant commercial property being registered is in compliance with any applicable, local or state regulation or law.

14-137. Fees.

- (a) An annual registration fee of \$1,000.00 shall be collected upon registration of the vacant property and collected annually on the renewal of the registration. Fees will not be prorated.

14-138. Exemptions

1. A vacant building that is actively listed with a licensed NC realtor and offered for sale or lease for a period of no more than one calendar year shall be exempt from the annual vacant building registration fee subject to the following conditions:
 - (a) The building is offered for sale at a price not to exceed twenty (20) percent above the assessed value determined by the Cumberland County Tax Administrator with annual adjustments in accordance with procedures consistent with professional appraisal standards.
 - (b) The building, or substantial portion thereof, is offered for lease at a capitalization rate of 7.2% or less. For the purpose of this section, "substantial "portion thereof" means at least an entire floor of a multi-story building or 50% of the floor area of a single story building.
 - (c) The owner will be required to submit evidence of the assessed value of the building to the city and the asking price or lease rate for the property thirty (30) days prior to the one-year anniversary of vacancy.
 - (d) The exemption can be extended for an additional year upon proof of good faith marketing of the property by the licensed realtor and compliance with all applicable city ordinances.
2. A vacant building that is being renovated under an active building permit for the purpose of preparing it for occupancy shall be exempt from the annual vacant building registration fee subject to the following conditions:
 - (a) The property owner can demonstrate that the work being performed is pursuant to the acquired permit for the preparation of occupancy, lease, or sale; and

(b) Inspections for the work covered under the permit are requested on at least a monthly basis.

14-139. Maintenance requirements.

Properties subject to this article shall be kept in compliance with the following maintenance requirements:

- (1) The exteriors of building(s)/structure(s) on the property shall be painted and maintained in a way that does not exhibit any evidence of vacancy.
- (2) The yard(s) of the property shall be maintained in a way that does not provide evidence of vacancy.
- (3) The deck(s) and porch(s) located on the property shall be maintained in a way that does not provide evidence of vacancy.
- (4) The window(s) and door(s) of building(s)/structure(s) of the property shall be intact and operable and shall be maintained in a way that does not provide evidence of vacancy.
- (5) Instances of rotting of building(s)/structure(s) located on the property or portion thereof shall be corrected in order to eliminate evidence of vacancy so that no visible rotting, with the exterior painted and kept in good aesthetic condition.
- (6) The property shall be maintained so as to exhibit no evidence of vacancy.
- (7) The storefronts and facades of buildings shall be maintained in a way that does not provide evidence of vacancy.
- (8) The interiors, when visible to passersby through storefront windows, shall be maintained in a way that does not exhibit evidence of vacancy.

14-140. Security requirements.

Vacant properties subject to this article shall comply with the following security requirements:

- (1) The property shall be maintained in a secure manner so as not to be accessible to unauthorized persons. This includes, without limitation, the closure and locking of windows, doors (including, but not limited to, walk-through, sliding, and garage), gates, pet doors, and any other such opening of such size that it may allow a child to access the interior of the property or structure(s).

- (2) Broken windows shall be replaced and/or re-glazed; windows shall not be boarded up.

14-141. Requirement to hire local agent for out-of-area owners.

(a) If the property owner's principal residence is not local, then a local agent shall be designated or contracted to fulfill the maintenance and security requirements of this article as set forth in Sections 14-137 and 14-138, and any other applicable laws.

(b) Information must be provided to the Development Services Department with the name, address and telephone number of the local agent to be kept on file with the Development Services Department. The property shall be posted with the name and 24-hour contact phone number of the local property management company.

(c) The requirement set forth in paragraph (a) of this section may be waived by the Development Services Director for owners who (1) reliably demonstrate an ability to maintain the property and (2) have not received any civil penalties for maintenance violations in the previous quarter.

(d) The owner may appeal this requirement to the Board of Appeals which may excuse owner from compliance if owner can present the ability to meet the requirements of this article without hiring a local property management company.

14-142. Inspections.

The city shall have the authority and the duty to inspect properties subject to this article for compliance and to issue citations for any violations. The city shall have the discretion to inspect the vacant property on a quarterly basis provided that their policies are designed to ensure that this article is enforced and inspections-related fees are commensurate with size of property inspected.

14-143. Enforcement, violations, and penalties.

(a) It shall be unlawful for any owner to be in violation of any of the provisions of this article.

(b) Any person who violates a provision of this article or fails to comply with any order made thereunder and from which no appeal has been taken, or who shall fail to comply with such order as affirmed or modified by appeal, or by a court of competent jurisdiction, within the time fixed herein, shall severally, for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable as provided in this article.

(c) The imposition of one penalty for any violation shall not excuse the violation, or authorize its continuance.

(d) All such persons shall be required to submit an acceptable plan of action to the Development Services Department within 10 business days of notification. This plan of action must include, but is not limited to, a description of the work to be done, by whom, and a specific schedule. Plans shall be reviewed by the Development Services Director and work is to commence within 15 days of the Development Services Director's approval. When not otherwise specified, failure to meet any stated condition within 10 days of required action shall constitute a separate offense.

(e) Penalties for failure to comply:

- (1) *Initial registration.* Failure to initially register with the Development Services Department within the time frame required is punishable by a civil penalty of \$500.00.
- (2) *Annual registration.* Failure to register annually is punishable by a civil penalty of \$500.00.
- (3) *Maintenance and security requirements.* Failure to meet the maintenance and security requirements shall be certified by inspections and is punishable by a civil penalty prorated according to the square footage of the principle structure as calculated by the Cumberland County Tax Assessor's Office, at a rate of \$0.20/sq. ft. but no more than \$500.00.
- (4) *Failure to submit plan.* Failure to submit plan of corrective action is a violation punishable by a civil penalty of \$500.00.
- (5) *Failure to implement plan.* Failure to implement plan within 15 days of approval or complete the plan within 60 days of approval, unless given an extension in writing by the Development Services Department, shall be identified by the Development Services Department and is a violation punishable by a civil penalty prorated according to the as calculated by the Cumberland County Tax Assessor's Office, at a rate of \$0.20/sq. ft. but no more than \$500.00.

14-144. Appeals.

Any person aggrieved by any of the requirements of this article may present an appeal in writing to the Board of Appeals.

14-145 Severability.

Should any provision, section, paragraph, sentence or word of this article be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this article shall remain in full force and effect.

14-146. Preemption.

Except as specifically preempted by N.C.G.S. §§ 160A-441, et. seq., and 160A-439, or city ordinances promulgated pursuant to N.C.G.S. § 160A-439, et. seq., this article shall apply to all vacant properties in the Primary Fire District of the City of Fayetteville.

14-147. Effective date.

This article shall become effective on _____.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

ADOPTED this _____ day of _____, 2016.

CITY OF FAYETTEVILLE

NAT ROBERTSON, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk