

ORDINANCE NO. 2013-_____

AN ORDINANCE TO AMEND THE TOWN CODE RELATING TO VACANT BUILDINGS.

WHEREAS, Section 29(a)(1) of the Town Charter of the Town of Milton vests power in the Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, Section 29(a)(7) of the Town Charter of the Town of Milton vests power in the Town Council to define, prevent, abate or remove nuisances, obstructions or any other condition detrimental to the public safety, health, or welfare; and

WHEREAS, Section 29(a)(29) of the Town Charter of the Town of Milton vests power in the Town Council to license, tax and collect fees annually for any and all municipal purposes (including the cost and expenses of advertising to the Town) of such various amounts as the Town Council from time to time shall fix from any individual, firm, association, or corporation carrying on or practicing any business, profession, or occupation within the limits of the Town; and

WHEREAS, Section 26(b)(6) of the Town Charter of the Town of Milton vests power in the Town Council levy taxes on vacant, commercial structures in the Town Center of Milton, not currently listed for rent or for sale, and not undergoing alteration to their building(s), after the period of six (6) months of such vacancy, at a per month rate to be determined by a majority vote of the Town Council; and

WHEREAS, Section 29(a)(23) of the Town Charter of the Town of Milton vests power in the Town Council to provide for the punishment of a violation of any Ordinance of the Town by fine or imprisonment, or both, not exceeding One Thousand Dollars (\$1,000.00) or sixty (60) days, or both;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton, a majority thereof concurring therein, that the following revisions hereby by incorporated into the Town Code a new Chapter 91, entitled "Buildings, Vacant", with additions shown by underlining and deletions shown by strike-through as follows:

§ 91-1. Purpose.

The purpose of this Chapter requiring the registration of all vacant buildings in the Town Center and the payment of registration fees 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 homes or 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, to require of the owners of such vacant buildings their registration and the payment of related fees, to prevent infestations of rodents and/or other public nuisances or eyesores, and to promote substantial efforts to

rehabilitate such vacant buildings. The provisions of this Chapter 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 this Town Code.

§ 91-2. Definitions; applicability; registration statement and fees.

For purposes of this Chapter, the following words and phrases shall have the following meanings:

BUILDING

Any structure which is wholly or partially enclosed within exterior walls, is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals or chattel.

BOARDED

A building 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.

EXTERIOR MAINTENANCE AND MAJOR SYSTEMS

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 and driveway, if any, area of the building's lot.

OCCUPIED

Any building if one or more persons actually conduct a lawful business in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner-occupant or tenant on a permanent, nontransient basis, or any combination of the same. For purposes of this Chapter, 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 sewer services; a valid Town business license; the most recent federal, state or Town 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.

OPEN

A building if any exterior door other than a storm door is broken, open, or closed but without a properly functioning lock to secure it, or if one or more windows are broken or not capable of being locked and secured from intrusion by any person, or any combination of the same.

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 Chapter, and as set forth below.

VACANT

A building if no person or business entity actively conducts a lawfully licensed business on a regular basis therein; however, a building shall not be deemed vacant for purposes of this Chapter if a person who normally conducts a lawfully licensed

business in the building or a person who lawfully resides or lives in any part of the building shall be temporarily absent from the premises for reasons of illness, vacation, military service, sabbatical, compassionate leave or other similar reasons but who intends to return to the premises on the earlier date of one year from the commencement of such absence, or when the reason for such absence terminates. Further, a building shall not be deemed vacant for purposes of this Chapter if the owner or owners thereof promptly present acceptable proof, upon request, that said building presently undergoing renovations or is being actively marketed for sale through the ongoing efforts of a licensed real estate broker, that said building is the subject of a current real estate multilisting, that said building is the subject of current published advertisements, or other acceptable evidence of current and ongoing listing for rent or sale.

§ 91-3. Applicability.

- A. The requirements of this Chapter shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 180 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, as hereinafter described, and any other information deemed necessary by the Town. The registration fees as required by the Town Fee Schedule shall be paid by January 1 of each year.
- B. For purposes of this Chapter, the following shall also be applicable:
 - (1) If the owner is an artificial entity, the registration statement shall provide the entity's name and names and address of all registered agent and shall be accompanied by a copy of the most recent annual franchise tax report filed with the Secretary of State or similar document for an out-of-state artificial entity;
 - (2) If an estate, the registration statement shall provide the name and residential address of the personal representative of the estate;
 - (3) If a trust, the registration statement shall provide the name and address of all trustees, grantors and beneficiaries;
 - (4) If a partnership, the registration statement shall provide the names and residential addresses of all partners with an interest of 10% or greater;
 - (5) If any other form of unincorporated association, the registration statement shall provide the names and residential addresses of all principals with an interest of 10% or greater;
 - (6) If an individual person, the registration statement shall provide the name and residential address of that individual person.
- C. This Chapter 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.

§ 91-4. Registration statement and fees; local agent.

- A. If none of the persons listed above is shown at an address within the State, the registration statement shall also 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 owner(s) 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 45 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 Town Code provision, including but not limited to the building code or housing code. One registration statement may be filed to include all vacant buildings of the owner so registering.

B. The owner of the vacant building as of November 15 of each calendar year shall be responsible for completing the registration statement promulgated by the Town and the payment of the nonrefundable registration fee. Said fee shall be due annually to the Town and based on the duration of the vacancy as determined by the following scale:

(1) No fee for a building which is vacant for less than one year;

(2) For each building which is vacant for at least one year but less than two years: \$ _____;

(3) For each building which is vacant for at least two years but less than three years: \$ _____;

(4) For each building which is vacant for at least three years but less than five years: \$ _____;

(5) For each building which is vacant for at least five years but less than 10 years: \$ _____; and

(6) For each building which is vacant for at least 10 years: \$ _____.

C. Retroactivity. This Chapter shall apply retroactively, in that any building which is vacant on the date of the enactment of this Chapter (this _____ day of _____, 2013) shall be charged such registration fee as is appropriate based upon the length of time which such building has been continuously vacant immediately prior to the date of enactment of this Chapter.

D. One-time waiver of registration fee. A one-time waiver of the registration fee may be granted by the Code Enforcement Officer upon application of the owner, if the owner:

(1) Demonstrates with satisfactory proof that the owner is in the actively engaged in the process of demolition, rehabilitation or other substantial repair of the vacant building; and

(2) Objectively demonstrates a reasonable anticipated length of time for the demolition, rehabilitation or other substantial repair of the vacant building; or

(3) Provides satisfactory proof that the owner was actively attempting to sell or lease the property during the vacancy period.

E. 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, responsible party or agent for the same to contact the Town within 30 days of the occurrence of such change and advise the Town, in writing, of those changes.

§ 91-5. Violations and penalties; delinquent fee as a lien.

A. Noncompliance with this Chapter, including but not limited to 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

- Chapter within 30 days after they become due, shall constitute a violation, punishable upon conviction thereof by a fine in the amount of not less than \$50 nor more than \$99. Each day of a separate and continuing violation shall be deemed a separate offense.
- B. The Town Code Enforcement Officer shall have authority to enforce this Chapter. The nearest Justice of the Peace Court shall have exclusive and original jurisdiction over offenses prosecuted under this Chapter.
- C. After the owner is given notice of the amount of the registration fee due, if the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the Town and shall constitute a lien in favor of the Town against the title to the property, and the Town may commence a civil action to collect such unpaid debt. Such a civil action shall not bar enforcement of any other provision within this Chapter or other applicable chapters.

SYNOPSIS

This Ordinance amends the Town Code to add a chapter entitled "Buildings, Vacant." The Ordinance requires an annual registration statement and fee for a vacant building.

I, **MARION JONES**, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the ____ day of _____, 2013, following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.

MAYOR