

ORDINANCE NO. 2018-6

AN ORDINANCE OF THE VILLAGE OF STERLING, NEBRASKA, RELATING TO GENERAL OFFENSES; TO PROHIBIT THE VACANCY OF PROPERTIES; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CHAIRPERSON AND BOARD OF TRUSTEES OF THE VILLAGE OF STERLING, NEBRASKA:

Section 1: Purpose. Recognizing that vacant commercial and residential buildings (hereinafter referred to as "vacant properties") contribute to blight, discourage economic development, hinder appreciation of property values, endanger public health and safety, attract criminal activity, and create fire hazards, it is the responsibility of property owners to prevent vacant properties from becoming a burden to the neighborhood and community and a threat to the public health, safety and welfare. Maintenance of the public health, safety, and welfare thus requires the village to maintain an accurate registration of all vacant properties. Any fees imposed under a vacant property registration ordinance have the potential to benefit the owners of vacant properties by helping to finance additional government services to protect the value and security of such properties.

Section 2: Public Nuisance. Vacant properties shall constitute a public nuisance. The Village of Sterling is given the power and authority pursuant to Nebraska Revised Statute §18-1720 to define, regulate, suppress and prevent such nuisances. A vacant property registration ordinance places a duty on the owner of vacant properties to assist the village in preventing public nuisance. The Village Clerk shall be the program administrator for the vacant property registration list and said registration applies to any and all vacant properties within the village limits.

Section 3: Duty of Owner. All owners of vacant property subject to a vacant property registration ordinance, adopted pursuant to Nebraska Revised Statute §19-5406, shall be required to register such property with the Village Clerk.

Section 4: Vacant Property Registration Ordinance. The owner of a vacant property must register said property with the Village Clerk within thirty (30) calendar days of written notice provided to the owner or the owner's resident agent of the existence of the vacant property. Such notice shall be served on the owner or resident agent by personal service or by certified mail, return receipt requested. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the village or by conspicuously posting the notice on the commercial building or residential building which is vacant. A copy of the notice under this section shall be recorded by the County Clerk, or his or her designee, in the records of the Register of Deeds for Johnson County, Nebraska and indexed against the premises.

For purposes of this Section, evidence of vacancy means any condition or circumstance that on its own or in combination with other conditions or circumstances would lead a reasonable person to believe that a residential building or commercial building is vacant. Such conditions or circumstances may include, but are not limited to, the following:

- (a) Overgrown or dead vegetation, including grass, shrubbery, and other plantings;
- (b) An accumulation of abandoned personal property, trash or other waste;
- (c) Visible deterioration or lack of maintenance of any building or structure on the property;
- (d) Graffiti or other defacement of any building or structure on the property; or
- (e) Any other condition or circumstance reasonably indicating that the property is not occupied for residential purposes or being used for the operation of a lawful business.

For purposes of this section, a vacant property shall not be used for storage unless specifically allowed pursuant to the Village of Sterling Zoning Ordinance.

Section 5: Definitions. For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them:

Vacant means the property has been vacant for 180 days or longer and during such time, has continuously exhibited evidence of vacancy as described in Section 4.

Owner of vacant property means the person or persons shown to be the owner or owners of record on the records of the register of deeds.

Commercial building means a building with more than fifty (50) percent of its floor space used for commercial activity. For the purposes of this section, floor space shall be designated as the area on the main or street level of the building. For purposes of this section, commercial activity means having the objective of supplying commodities (goods and services), industrial uses, industrial manufacturing, and ancillary business functions.

Residential building means a housing structure or other framework, together with such land on which the dwelling and appurtenant buildings are located, that is used or intended to support occupancy of one or more persons for non-business purposes. This includes, but is not limited to the following: a house, a condominium, a townhouse, an apartment unit or building, or a trailer house.

Section 6: Exemptions. The vacant property registration ordinance provides the following exemptions to the vacant property registration and fee requirements, including, but not limited to, the following:

- (a) Property only considered to be a seasonal residence;
- (b) Property of an owner who is temporarily absent, but who has demonstrated his or her intent to return;
- (c) Property damaged by fire, weather, an act of God, or vandalism;
- (d) Property under construction or renovation pursuant to a valid building permit issued by the Village of Sterling;

- (e) Property subject to divorce, probate or estate proceedings;
- (f) Property of an owner who is absent and cannot occupy such property due to medical reasons;
- (g) Property that is "for sale," "for rent," or "for lease" and where the owner can produce sufficient good faith evidence of active marketing of sale, rent or lease; and
- (h) Property owned by the federal government, the State of Nebraska, or any political subdivision thereof.

Section 7: Registration Forms. The required vacant property registration shall be submitted on the form provided by the village. The form shall include, but not be limited to the following: the name, current mailing address, telephone number, facsimile and email address (if applicable) of the property owner and his or her agent; the street address and parcel identification number of the vacant property; the transfer date of the instrument conveying the property to the owner; the date on which the property became vacant; and such other information deemed necessary by the village. The form shall also include the period of time the vacant property is expected to remain vacant, and a plan and timetable for performance of one or more of the following:

- (a) Returning the vacant property to the appropriate occupancy or use;
- (b) Marketing the property for sale or lease;
- (c) Making any necessary repairs; or
- (d) Demolition of the property.

All applicable laws and codes shall be complied with by the owner. The owner shall notify the village of any changes in information supplied as part of the vacant property registration within thirty (30) calendar days of the change.

If the owner of the vacant property does not reside in Johnson County for at least one hundred eighty (180) days in a calendar year, then the owner must provide information for a resident agent with authority to act with respect to the property, including the name, current mailing address, phone number, and any other contact information of the owner's agent. Any subsequent owner of a vacant property must register or re-register the building with the village within thirty (30) calendar days of any transfer of any ownership interest in the vacant property. The new owner(s) shall comply with the approved plan and timetable submitted by the previous owner until any proposed changes are submitted by the new owner and meet the approval of the village.

An owner who acquires a vacant property for which a registration fee has already been paid for a particular period is not liable for an additional registration fee for that period; however, the new owner must register the change of ownership with the village.

Section 8: Vacant Property Fees.

Residential Property: There is no fee for initial registration of vacant residential property. However, if the owner fails to remedy the vacant property and successfully have it removed from the vacant property registration list within 180 days from the initial registration date, or within 180 days from the initial registration date deadline if the owner fails to register the property, then

the owner of a vacant residential property shall be assessed a fee of \$250.00, payable to the Village of Sterling. In addition, a supplemental fee of \$500.00 will be assessed to the owner of the vacant property for every 180-day period thereafter, until the vacant property is removed from the registration list.

Commercial Property: There is no fee for initial registration of vacant commercial property. However, if the owner fails to remedy the vacant property and successfully have it removed from the vacant property registration list within 180 days from the initial registration date, or within 180 days from the initial registration date deadline if the owner fails to register the property, then the owner of a vacant commercial property shall be assessed a fee of \$500.00, payable to the Village of Sterling. In addition, a supplemental fee of \$1000.00 will be assessed to the owner of the vacant property for every 180-day period thereafter, until the vacant property is removed from the registration list.

Registration fees may be refundable for the year preceding the date on which the property is no longer vacant. Unpaid registration fees shall become a lien on the premises, as well as a liability of the responsible party. Additionally, the village attorney may institute appropriate action against the owner for the recovery of such costs.

Section 9: Penalties. Any person upon whom a duty is placed by the provisions of this ordinance who shall fail, neglect, or refuse to perform such duty, or who shall violate a provision of this ordinance shall be deemed guilty of an infraction and upon conviction thereof shall be fined in any sum not to exceed five hundred dollars (\$500.00), except that each person so convicted shall be fined in a sum of not less than two hundred dollars (\$200.00) for the first offense, not less than three hundred dollars (\$300.00) for the second offense, and not less than four hundred dollars (\$400.00) for the third offense and each offense thereafter. The penalty herein provided shall be cumulative with and in addition to the revocation, cancellation, or forfeiture of any license, permit, or right elsewhere provided for or as provided by law. Each day that a violation of this ordinance continues shall constitute a separate and distinct offense and shall be punishable as such.

Any and all civil penalties assessed under this ordinance shall be billed to the owner or other responsible party. Failure or refusal to pay any and all such penalties permits the village to pursue any and all available legal remedies for the enforcement and collection of such penalties; including, but not limited to, civil actions being filed in district court, suits or actions being maintained in any court of competent jurisdiction, abatement of nuisances maintained in violation of this ordinance, institution of injunction, mandamus, or other appropriate action or proceedings to enforce the penalty provisions of this ordinance. This ordinance in no way limits the penalties, actions or abatement procedures which may be taken by the village for a violation of any other ordinance of the village or statute of the State of Nebraska.

Section 10: Emergency Repairs. Where any unsafe building or structure poses an immediate danger to the health, safety, or general welfare of any person or persons, and the owner fails to remedy the situation in a reasonable time after notice by the Village Clerk to do so, the village may summarily repair such building or structure.

Section 11: Removal of Property from the Registration List. An owner may have his or her vacant property removed from the vacant property registration by providing sufficient notification and evidence to the Village Clerk, or his or her designee, that said vacant property no longer meets the definition of vacancy as described in Section 4. The Village Clerk, or his or her designee, may then evaluate or inspect the property to determine whether the property should be removed from the registration list.

Section 12: Appeals: Upon receiving notice declaring a that a building is vacant or remains vacant, the owner of the building may appeal such decision within twenty (20) calendar days of receipt of the notice. Such appeal shall be in writing to the Village Clerk accompanied by a non-refundable appeal fee. Such appeal shall request a hearing before the Board of Trustees to present reasons why the building should not be declared vacant. The appeal fee shall be set by resolution of the Board of Trustees. The Board of Trustees shall set such hearing within twenty (20) business days from the date of receipt of the written request.

A written notice of the Board of Trustees decision following the hearing shall be sent to the property owner by certified mail or shall be provided at the conclusion of the meeting. If the Board of Trustees rejects the appeal, the owner shall have thirty (30) calendar days from the decision to register the vacant building; provided, the property owner may appeal such decision, within thirty (30) calendar days of the Board of Trustees decision, to the appropriate court for adjudication during which proceedings the decision of the Board of Trustees shall be stayed.

Section 13: Repeal Action. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 14: Effective Date. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

Passed and approved this _____ day of _____, 2018.

Chairperson of the Board of Trustees of the
Village of Sterling, Nebraska

(Seal)

Clerk