

ORDINANCE NO. _____ - 2017

**AMENDING CHAPTER 123 OF THE BOROUGH OF SOUTH GREENSBURG CODE
PROVIDING FOR THE REGISTRATION, MAINTENANCE, AND SECURITY OF
ABANDONED REAL PROPERTY**

WHEREAS, the Borough of South Greensburg (the "Borough") recognizes the existence of vacant and abandoned properties located within the limits of the Borough; and

WHEREAS, the presence of such properties can lead to a variety of serious negative impacts to the public health, safety, and welfare of the community, being potentially structurally defective and unmaintained properties that contribute to a decline in property value, create attractive nuisances, and lead to a general decrease in neighborhood and community aesthetics; and

WHEREAS, many vacant and abandoned properties are the responsibility of mortgage lenders and trustees who, upon giving of a Notice of Default to the mortgagor, or upon becoming a mortgagee in possession, or upon becoming holder of title pursuant to a mortgage foreclosure sale, fail to adequately secure and maintain such properties; and

WHEREAS, the Borough has an interest in protecting the Borough and its residents from the dangerous and damaging effects caused by vacant and abandoned properties and concludes that it is in the best interest of the citizens and residents to impose registration requirements on such properties.

NOW, THEREFORE, be it enacted and ordained by Counsel of the Borough of South Greensburg in a regular meeting assembled and by authority of the same:

SECTION 1. Chapter 125 of the Borough of South Greensburg Code, entitled Property Maintenance, is amended to designate Sections 125-1 through 125-25 as "Article I General Property Maintenance."

SECTION 2. Chapter 125 of the Borough of South Greensburg Code is amended to add an Article II, entitled "Vacant and Abandoned Property," as follows:

**Article II
Vacant and Abandoned Property**

§ 125-26. Purpose and Intent.

A. It is the purpose and intent of the Borough of South Greensburg to establish a process to address the amount of deteriorating real property located within the Borough, which includes but is not limited to property, whether vacant or occupied, about which a public notice of default has

been filed, is in foreclosure, or where ownership has been transferred to lender or mortgagee by any legal method.

B. It is the Borough's intent to specifically establish a vacant or abandoned residential property program as a mechanism to protect the Borough from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

C. For the protection and promotion of the public health, safety, and welfare of the citizens of the Borough of South Greensburg, the Borough Council hereby establishes the rights and obligations of owners, mortgagees and property management companies of vacant and abandoned properties within the Borough and encourages owners, mortgagees and property management companies to maintain and secure such property through registration and compliance with this Chapter.

§ 125-27. Definitions.

The following words, terms and phrases, when used in these sections of the Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned real property – Any property that is vacant or is subject to a mortgage under a current Notice of Default or Notice of Mortgagee's Sale, pending Tax Claim Sale or vacant properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure or sale.

Enforcement officer – Any building official, zoning inspector, code enforcement officer, health officer, police officer, fire inspector or building inspector employed by the Borough.

Evidence of vacancy – 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 may include, but not be limited to, overgrown or dead vegetation, accumulation of abandoned personal property, extensive or pervasive damage of improvements to real property, broken or boarded up windows and/or doors, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

Foreclosure – The process by which a property, placed as security for a real estate loan, is sold at public sale to satisfy the debt if the borrower defaults.

Mortgage – A conveyance of title to property that is given as security for the payment of debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms.

Mortgagee – One to who property is mortgaged or the mortgage creditor or lender.

Mortgagee in possession – A mortgagee who takes control of mortgaged land by agreement with the mortgagor, usually upon default of the loan secured by the mortgage.

Owner – Any person, agent, operator, firm or corporation having a legal or equitable interest in real property; or recorded in the official records of the Commonwealth, County or Borough as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the trustee, executor or administrator of the estate of such person if authorized by law to take possession of real property, or if ordered or authorized to take possession of real property by a court.

Person – An individual, sole proprietorship, business organization, corporation, partnership or any other group and/or entity acting as a unit.

Property management company – A property manager, property maintenance company or similar entity or individual responsible for the maintenance of abandoned real property.

Vacant – Any building/structure that is not legally occupied.

§ 125-28. Applicability.

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but shall rather be an additional remedy available to the Borough above and beyond any other state, county or local provisions for same.

§ 125-29. Registration of Abandoned or Vacant Real Property.

A. The owner of vacant and/or abandoned real property shall register the property with the Borough within thirty (30) days of the vacancy or abandonment of the property, and annually thereafter, by February 1 of each year the property remains vacant and/or abandoned. The Owner shall register the property with the Borough, or its designee, on forms provided by the Borough. Within ten (10) days of the property being lawfully occupied, the Owner shall provide notice of the same to the Borough. The registration fee shall not be prorated based upon the date of registration.

B. Any mortgagee who holds a mortgage on real property located within the Borough shall, upon default by the mortgagor and prior to the issuance of a notice of default, perform an inspection of the property that is the security for the mortgage. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned real property and the mortgagee shall, within ten (10) days of the inspection, register the property with the Borough, or its designee, on forms provided by the Borough.

C. If the property is occupied but the mortgage on the property remains in default, the property shall be inspected to determine vacancy or occupancy status by the mortgagee or his designee monthly until: (1) the mortgagor or other party remedies the default, or (2) it is found to be

vacant or shows evidence of vacancy at which time it is deemed abandoned, and the mortgagee shall, within ten (10) days of that inspection, update the property registration to a vacancy status providing the date of last inspection on forms provided by the Borough.

D. Registration pursuant to this section shall contain the name of the Owner and/or mortgagee, and such person's direct mailing address, a direct contact name and telephone number, facsimile number, and email address, the tax number and address of the vacant and/or abandoned property, and the name and twenty-four (24) hour contact phone number of the property management company responsible for the security and maintenance of the property, if one exists.

E. This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale, and the property remains vacant.

F. A registration fee shall be required in the amount as designated by Council pursuant to §1-16 herein.

G. Properties subject to this section shall remain under the registration requirement, security and maintenance standards of this section as long as they remain vacant.

H. Any person or corporation that has registered a property under this section must report any change of information contained in the registration in writing within ten (10) days of the change to the Borough or its designee.

§ 125-30. Maintenance Requirements.

A. Properties subject to this Article II shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circular, flyers, notices (except those required by federal, state, or local law), abandoned vehicles, portable storage devices, 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 abandoned.

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

C. Front, side, and rear yards, including landscaping, shall be maintained in accordance with the Borough's Ordinances, including, by example and not limitation, the Borough's Property Maintenance Code.

D. Yard maintenance shall include, but not be limited to grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for

residential installation. Acceptable maintenance of yards and/or landscaping shall not include weeds, gravel, broken concrete, asphalt or similar material.

E. Maintenance shall include, but not be limited to cutting, trimming, and mowing of required ground cover or landscape and removal of all trimmings.

F. Pools and spas shall be maintained so that the water remains free and clear of pollutants and debris, and does not cause a danger to the public health, safety, and welfare. Pools and spas shall comply with all requirements of the Borough's Ordinances, the Borough's Property Maintenance Code, and Pennsylvania Uniform Construction Code, as amended from time to time.

G. Failure of the owner or mortgagee to properly maintain the property may result in a violation of the Borough's Code and subject the owner or mortgagee to the enforcement provisions of this Article and the Borough Code.

§ 125-31. Security Requirements.

A. Properties subject to this Ordinance shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

B. A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows shall be secured by reglazing of the window.

C. If the owner and/or mortgagee is unable or unwilling to perform maintenance and inspections itself, the owner or mortgagee shall contract with a property management company who shall perform monthly inspections to verify compliance with the requirements of this section, and any other applicable laws. Upon the request of the Borough, the owner or mortgagee shall provide a copy of the inspection reports to the Borough or its designee.

E. Failure of the owner and/or mortgagee to properly maintain the property will result in a violation of this Article II and the Borough Code, which will result in the issuance of an appropriate citation.

§ 125-32. Additional Security.

The enforcement officer or its designee shall have authority to require the owner and/or mortgagee of any property affected by this Ordinance, to implement maintenance or security measures including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard, or other measures as may be reasonably required to prevent a decline of the property. The enforcement officer or its designee shall exercise this authority through the issuance of a notice of violation, pursuant to §125-34, which outlines the appropriate corrective action. Further, in view of the last referenced authority, it is specifically declared that:

A. In the event that the owner and/or mortgagee fail to take appropriate action to secure the structure within ten (10) days of demand by the enforcement officer or designee as outlined above, and the enforcement officer determines that the unsecured structure presents a danger to the public health, safety, and welfare of the community, the Borough may secure the structure, and charge the owner and/or mortgagee for the actual costs of securing the structure, including the cost of using a Borough employee to secure the structure. If the condition of the real property creates an immediate danger to the public health, safety, and welfare of the community, the Borough is authorized to immediately secure the structure, issue the notice of violation, and charge the owner and/or mortgagee for the actual costs of securing the structure, including the cost of using a Borough employee to secure the structure.

B. Whenever a structure or equipment is determined by the enforcement officer or its designee to be unsafe, or when the enforcement officer or Borough determines that a structure is unfit for human occupancy or found to be unlawful such that said structure shall be subject to condemnation proceedings under the Property Maintenance Code as adopted by the Borough (with amendments thereto), then such structure may be condemned under the provisions of the Property Maintenance Code. If and when the Borough elects to condemn the property, all continuing and future action by the Borough shall be governed by the requirements of the Property Maintenance Code.

§ 125-33. Immunity.

Any Borough officer or employee or any person authorized by the Borough to take action pursuant to this Article II shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this Ordinance

§ 125-34. Notice of Violation.

Whenever real property or an owner and/or mortgagee is in violation of the provision(s) of this Article II, the enforcement officer or its designee shall provide notice of such violation to the owner and/or mortgagee, detailing the violation and the appropriate corrective action. Notice shall be by way of certified, restricted delivery mail requiring the signature of the owner and/or mortgagee. If the same is returned as non-deliverable or not accepted by said owner and/or mortgagee, the notice of violation shall be mailed to the owner and/or mortgagee by way of regular first class mail and the notice shall also be conspicuously posted on the real property for a period of fourteen (14) days. The posted notice shall be in a clear plastic sleeve with the opening taped so as to lessen the affect of moisture on the notice. All notices of violation shall be accompanied by a copy of this Article II. The owner shall have ten (10) days to comply with the notice of violation. The ten day period shall begin on the date that the owner and/or mortgagee accepted the certified, restricted delivery mail, or upon the completion of the fourteen day (14) posting requirement. Failure to comply with the notice may lead to enforcement of this Article II pursuant to §125-35.

§ 125-35. Penalties and Remedies.

A. It shall be a violation of this Article II to commit or permit any other person to commit any of the following acts:

1. To fail to perform any inspection or to register any property as required by the provisions of this Article II..
2. To fail to pay the registration fee as required by the provisions of this Article II.
3. To fail to maintain property as required by the provisions of this Article II.
4. To fail to perform the inspection and maintenance relating to properties so that they are maintained in a secure manner as required by the provisions of this Article II.
5. To refuse to permit inspections as required by the provisions of this Article II.
6. To place any false information on or to omit relevant information from an application for registration as required by the provisions of this Article II.
7. To fail or refuse to comply with any other provision of this Article II.

B. Penalties and Remedies.

1. Any person who shall violate any of the provisions of this Ordinance shall be guilty of a summary offense and, upon conviction thereof before a Magisterial District Judge, shall be sentenced to pay a fine of \$1,000.00 and the cost of prosecution for each and every offense, and in default of payment thereof, shall be sentenced to imprisonment in Westmoreland County Prison for not more than thirty (30) days. Each violation and each day of violation shall constitute a separate offense. If an appeal is filed, pursuant to §125-35, the Borough
2. In addition to prosecution of the persons violating this Article II, the Borough may bring such civil or equitable actions, seeking civil or equitable remedies, in any appropriate Court of record of the Commonwealth of Pennsylvania, against any persons and/or property, real or personal, to enforce the provisions of this Ordinance. The remedies and procedures of this Ordinance are not intended to supplant or replace, to any degree, the remedies provided to the Borough in the Borough's Property Maintenance Code, Uniform Construction Code, Zoning Ordinance, or any other Borough Code, or Ordinance.

§ 125-35. Appeals.

A. Any person aggrieved by the issuance of a notice of violation may file an appeal from that notice to the Borough Council within ten (10) days of the notice of the violation. The appeal shall set forth the factual and legal basis as to why the Borough’s action against such real property, owner and/or mortgagee was unlawful. A public hearing shall be heard on the appeal within thirty days of the filing of the appeal, at which time the appellant shall present their appeal. The Borough employee, official, enforcement officer or designee responsible for the action giving rise to the appeal may make a presentation to the Borough Council. The Borough Council shall issue a decision on the appeal following the presentment of the appeal and prior to the close of the Public Hearing.

B. Any person aggrieved by any decision of the Borough Council relevant to the provisions of this Ordinance may appeal to the Westmoreland County Court of Common Pleas within thirty (30) days of the decision.

§ 125-36. Severability.

If any section, clause, sentence, or phrase of this Article II is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Article II.

SECTION 3. All sections or parts of sections of the Borough Ordinances, all ordinances or part of ordinances, and all Resolutions, or parts of Resolutions, in conflict with the Ordinance are repealed to the extent of such conflict.

SECTION 4. This Ordinance shall be effective immediately.

SECTION 5. All other Ordinances inconsistent herewith are repealed.

ORDAINED AND ENACTED into an Ordinance of the Borough of South Greensburg this _____ day of _____, 2017, by the Council for the Borough of South Greensburg.

ATTEST:

BOROUGH OF SOUTH GREENSBURG

By: _____
Secretary

By: _____
Clentin C. Martin, President of Council

Examined and approved this ____ day of _____, 2017

By: _____
Betty Dobies, Mayor