

ORDINANCE NO. 154-2019

**BOROUGH OF MODENA
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF THE BOROUGH OF MODENA, CHESTER COUNTY, PENNSYLVANIA ESTABLISHING
THE "REGISTRATION MAINTENANCE AND SECURITY OF ABANDONED REAL PROPERTY ORDINANCE"
PROVIDING FOR REGISTRATION, MAINTENANCE AND SECURITY OF ABANDONED REAL PROPERTY AS
DEFINED THEREIN AND PROVIDING FOR PENALTIES FOR VIOLATIONS, SEVERABILITY, CONFLICTS AND
AN EFFECTIVE DATE**

WHEREAS, the Borough of Modena (the "Borough") recognizes an increase in the number of vacant and abandoned properties located throughout the Borough; and

WHEREAS, the presence of vacant and abandoned properties can lead to a decline in property value, creates attractive nuisances, and leads to a general decrease in neighborhood and community aesthetics; and

WHEREAS, vacant and abandoned properties present a serious threat to the public health and safety of the community; and

WHEREAS, the presence of vacant and abandoned properties may discourage prospective buyers from purchasing real property within the Borough; 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 a vested interest in protecting the Borough against the decay 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 located within the Borough.

NOW, THEREFORE, be it ORDAINED by the Borough Council of the Borough of Modena, the following:

SECTION 1. PURPOSE AND INTENT:

- A. It is the purpose and intent of the Borough of Modena to establish a process to address the amount of deteriorating real property located within the Borough, which includes 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. It is the Borough's further intent to specifically establish an abandoned residential property program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.
- B. For the protection and promotion of the public health, safety and welfare of the citizens of the Borough of Modena, 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 Ordinance.

SECTION 2. 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, 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 real property, as defined herein, 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 whom 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, corporation, partnership or any other group 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.

SECTION 3. 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.

SECTION 4. REGISTRATION OF ABANDONED REAL PROPERTY:

- A. 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 or through a website designated by the Borough. A registration is required for each property whether vacant or occupied.
- B. If the property is occupied but the mortgage on the property remains in default, the property shall be inspected to monthly 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.
- C. Registration pursuant to this section shall contain the name of the mortgagee and the servicer, the direct mailing address of both parties, a direct contact name and telephone number for both parties, a facsimile number and email address for both parties, the folio or tax number, 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.
- D. 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.
- E. A registration fee in the amount of ^{500⁰⁰}~~200~~.00 per property shall accompany the registration form(s).

- F. Properties subject to this section shall remain under the registration requirement, security and maintenance standards of this section as long as they remain vacant.
- G. 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 Manager or his designee.

SECTION 5. MAINTENANCE REQUIREMENTS:

- A. Properties subject to this section 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 International 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, watering, irrigation, cutting, 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. Pools and spas shall comply with all requirements of the Borough's Ordinances, the Borough's International Property Maintenance Code, and Pennsylvania Uniform Construction Code, as amended from time to time.
- G. Failure of the mortgagee or property owner of record to properly maintain the property may result in a violation of the Borough's Code and issuance of a citation or Notice of Violation.

SECTION 6. 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 property is owned by a corporation or mortgagee that is unable or unwilling to perform maintenance and inspections itself, the corporation or mortgagee shall contract with a property Management Company to perform bi-weekly inspections to verify compliance with the requirements of this section, and any other applicable laws.
- D. The mortgagee shall inspect or have inspected the property on a bi-weekly basis to ensure that the property is in compliance with this Ordinance. Upon the request of the Borough, the mortgagee shall provide a copy of the inspection reports to the Borough Code Enforcement Department.
- E. Failure of the mortgagee or property owner of record to properly maintain the property will result in a violation of the Borough Ordinance and will result in the issuance of a Citation. Pursuant to a finding and determination by the Borough's Code Enforcement Office, the Borough may take the necessary action to ensure compliance with this Ordinance.

SECTION 7. ADDITIONAL AUTHORITY:

The Borough, or its designee, shall have authority to require the mortgagee or owner of record of any property affected by this Ordinance, to implement additional 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. Further, in view of the last referenced authority, it is specifically declared that:

A. Whenever a structure or equipment is determined by the Enforcement Officer to be unsafe, or when the Enforcement Officer 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 International Property Maintenance Code as adopted by the Borough of Modena (with amendments thereto), then such unsafe structure or equipment or structure unfit for inhabitancy shall be condemned under the provisions of the International Property Maintenance Code as adopted by the Borough of Modena (with amendments thereto).

B. At the point of condemnation by the Enforcement Officer as identified in paragraph A to Section 7 above, all continuing and future action by the Enforcement Officer and all penalties and procedures shall be governed by the requirements of the International Property Maintenance Code as adopted by the Borough of Modena (with amendments thereto) which such Code and Amendments are incorporated herein by reference as though set forth at length.

SECTION 8. IMMUNITY OF ENFORCEMENT OFFICER:

Any enforcement officer or any person authorized by the enforcement officer 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.

SECTION 9. PENALTIES AND REMEDIES:

A. It shall be a violation of this Ordinance 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 required by Section 4 of this Ordinance.
- 2) To fail to pay a registration fee in the amount of ~~Two~~ ^{FIVE} Hundred Dollars (~~\$200.00~~ ^{\$500.00}) pursuant to Section 4E of this Ordinance.
- 3) To fail to maintain property as required under Section 4 of this Ordinance.
- 4) To fail to perform the inspection and maintenance relating to properties so that they are maintained in a secure manner pursuant to the provisions of Section 5 of this Ordinance.
- 5) To refuse to permit inspections required under this Ordinance.
- 6) To place any false information on or to omit relevant information from and application for registration provided pursuant to this Ordinance.
- 7) To fail or refuse to comply with any other provision of this Ordinance.

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 \$500.00 and the cost of prosecution for each and every offense, and in default of payment thereof, shall be sentenced to imprisonment in Chester County Prison for not more than thirty (30) days. Each violation and each day of violation shall constitute a separate offense.

2) In addition to prosecution of the persons violating this Ordinance, a Borough Enforcement Officer, Borough Solicitor, or any other duly authorized agent of the Borough may bring such civil or equitable actions, seeking civil or equitable remedies, and any appropriate Court of record of the Commonwealth of Pennsylvania, against any persons and/or property, real or personal, to effect 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 International Property Maintenance Code, Uniform Construction Code, Zoning Ordinance, or any other Borough Code, Ordinance or Resolution.

SECTION 10. APPEALS:

- A. Any person aggrieved by the action of the Borough or its designee relevant to the provisions of this Ordinance may appeal to the Borough's UCC Appeals Board within thirty (30) days of that action. B. Any person aggrieved by any decision of the Borough or the Borough UCC Appeals Board relevant to the provisions of this Ordinance may appeal to the Chester County Court of Common Pleas within thirty (30) days of the decision.


SECTION 11:


If any section, clause, sentence, or phrase of this Ordinance 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 Ordinance.

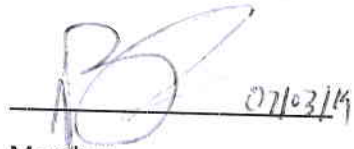
SECTION 12: All sections or parts of sections of the Borough Ordinances, all ordinances or part of ordinances, and all Resolutions, or parts of Resolutions, in conflict with the Ordinance are repealed to the extent of such conflict.

SECTION 13. EFFECTIVE DATE: This Ordinance shall be effective upon passage in accordance with the requirements of the Borough Code.

ORDAINED and ENACTED by the Modena Borough Council this 3rd day of July, 2019 BOROUGH OF MODENA COUNCIL.


Jennifer Daywalt, President


Beau Tilghman, Vice President

 07/03/19
Member


Member

Member

Member

NOTICE

NOTICE IS HEREBY GIVEN that Modena Borough Council will hold a hearing on Mon. July 1, 2019 at 7:00 PM, prevailing time, at the Modena Borough Hall, 5 Woodland Ave., Modena, Pennsylvania, to consider the adoption of the following Ordinance / Amendment to Borough,

Ordinance No. 154-2019, an ordinance providing for Blight.

THE ORDINANCE WILL ACCOMPLISH THE FOLLOWING:

AN ORDINANCE OF THE BOROUGH OF MODENA, CHESTER COUNTY, PENNSYLVANIA ESTABLISHING THE "REGISTRATION MAINTENANCE AND SECURITY OF ABANDONED REAL PROPERTY ORDINANCE" PROVIDING FOR REGISTRATION, MAINTENANCE AND SECURITY OF ABANDON REAL PROPERTY AS DEFINED THEREIN AND PROVIDING FOR PENALTIES FOR VIOLATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

Entire Ordinance is available at Borough Hall for your review.

If you are a person with a disability wishing to attend the aforementioned meeting and require auxiliary aid, service, or other accommodation to observe or participate in the proceedings, please contact the Borough to discuss how your needs may be accommodated.

MODENA BOROUGH COUNCIL
Pres. *[Signature]*
Secty. *[Signature]*
5 Woodland Ave., Modena, PA 19358
(610)384-6777