

Chapter 21.09

REGISTRATION OF NEGLECTED BUILDINGS

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21.09.010 Purpose.

Vacant and neglected buildings are the single biggest source of urban blight in both residential and non-residential neighborhoods. Owners who fail to maintain their properties create eyesores that lead to increased crime, declining property values, and the disappearance of legal and legitimate commercial activity in the area. It is the responsibility of property owners to prevent buildings from becoming a burden to the neighborhood and community and a threat to the public health, safety, and welfare.

Such buildings constitute a nuisance. The establishment and enforcement of a registration system to monitor such buildings and to develop a means to decrease the number of neglected buildings within the city is necessary to adequately protect the public health, safety, and welfare of the citizens of Lincoln. (Ord. 20058 §1; August 11, 2014).

21.09.020 Public Nuisance.

Neglected buildings shall constitute a public nuisance. (Ord. 20058 §2; August 11, 2014).

21.09.030 Director of Building and Safety Responsible for Enforcement.

The Director of the Department of Building and Safety or his or her designees are designated to administer and enforce this chapter. (Ord. 20058 §3; August 11, 2014).

21.09.040 Violation Not Exclusive.

Violations of this chapter are in addition to any other violations enumerated within the ordinances of the Lincoln Municipal Code. This chapter in no way limits the penalties, actions, or abatement procedures which may be taken by the City for a violation of this chapter which is also a violation of any other ordinance of the City of Lincoln or statute of the State of Nebraska. (Ord. 20058 §4; August 11, 2014).

21.09.050 Inspection of Property.

(a) All personnel of the City authorized to enforce this chapter are hereby authorized and directed to make complaint-initiated inspections to determine the condition of property located within the city or within three miles of the corporate limits of the city and outside of any other organized city or village, in order that he or she may perform his/her duty of safeguarding the welfare and safety of the general public and in order that he/she may ascertain that property as set forth in this title is maintained as required herein.

(b) Any officer or employee of the City charged with the enforcement of this title shall not, in the discharge of his/her duties, thereby render himself/herself liable personally. Any suit brought against an officer or employee of the City because of such act performed by him or her in the enforcement of any of the provisions of this title shall be defended by the City Law Department until the final termination of the proceedings therein. (Ord. 20058 §5; August 11, 2014).

21.09.060 Definitions.

For purposes of this chapter, the following definitions shall apply:

Boarded up shall mean that some or all of the building's doors or windows have been covered with plywood, wood, or metal sheeting, paneling, or other similar materials, for the purpose of preventing entry into the building by persons, animals, or the elements of weather.

Building shall mean a building, accessory structure, or other structure used or intended to support permanent or continuous occupancy or use for residential purposes.

Building and Safety shall mean the Department of Building and Safety for the City of Lincoln, Nebraska.

City shall mean the City of Lincoln, Nebraska.

Deterioration shall mean to weaken, disintegrate, corrode, rust or decay, and lose effectiveness. The lowering in quality of the condition or appearance of a building, structure or parts thereof characterized by holes, breaks, rot, crumbling, peeling, rusting, or any other evidence of physical decay or neglect or excessive use or lack of maintenance over a substantial or widespread area as opposed to a limited or concentrated area.

Director shall mean the Director of the Department of Building and Safety or his or her designee.

Dwelling shall mean any building or structure that contains one or more dwelling units used, intended or designed to be built, used, rented, leased, let, or hired out to be occupied for living purposes. This includes, but is not limited to, single family houses, duplexes, and other similar buildings or structures.

Dwelling unit shall mean a single unit, with one or more rooms, providing complete independent living facilities for one or more persons, including, but not limited to, permanent living, sleeping, eating, cooking, bathing, showering, toilet, and other sanitation facilities.

LMC shall mean the Lincoln Municipal Code, including, but not limited to, all related building, construction, fire, plumbing, electrical, mechanical, and property maintenance codes.

Neglected building shall mean an unoccupied dwelling wherein one or more of the following events have occurred:

- (a) Within the last six months, the property is the subject of two or more notices of violation of the provisions of Chapters 5.38, 8.22, 8.26, 8.46, or 21.05 of the LMC;
- (b) The dwelling is repeatedly unsecured for 30 days or more;
- (c) The dwelling has sustained significant fire, wind, or water damage and is uninhabitable and no visible signs of consistent efforts to repair, rehabilitate, demolish, or remove the building are evident within 90 days after the occurrence resulting in the damage described herein;
- (d) The dwelling has been declared a nuisance pursuant to Neb. Rev. Stat. §18-1722 or LMC Chapter 8.26;
- (e) The dwelling has been boarded up for a period of more than ninety (90) days;
- (f) The dwelling has been declared and placarded by Building and Safety as an unsafe structure pursuant to LMC Sections 21.05.160 or 21.05.190 for more than two years;
- (g) The dwelling has sustained substantial deterioration due to lack of maintenance and the owner has failed to comply with a previous notice to correct a violation of the LMC;
- (h) The owner has failed to appear and a warrant has been issued in the County Court of Lancaster County, Nebraska for a violation of Chapters 5.38, 8.22, 8.26, or 21.05 of the LMC regarding an unoccupied building or structure with violations in said chapters;
- (i) The owner has refused to accept service of notices of violations of Chapters 5.38, 8.22, 8.26, or 21.05 of the LMC, when proper service has been attempted.

A vacant dwelling shall not be deemed neglected if such dwelling is compliant with the LMC, except that water, electric, or other utilities have been disconnected at the request of the owner.

Occupancy shall mean the purpose for which a building or portion thereof is utilized or occupied.

Owner shall mean any person who is a holder of any legal or equitable interest in the premises, and alone or jointly or severally with others:

- (a) Has record legal title to any dwelling or dwelling unit with or without accompanying actual possession thereof; or
- (b) Has charge, care or control of any dwelling or dwelling unit and has an interest in a structure, or as personal representative, trustee, or guardian of the estate of the owner. This shall not include resident agents.

Person, as used in this chapter, shall mean any individual, firm, association, corporation, company, syndicate, partnership, or other legal entity, or a natural person.

Premises shall mean a lot, plot, or parcel of land including the neglected building located thereon.

Resident agent shall mean a person residing within Lancaster County, Nebraska, or a company or agency with a manager or agent who resides in Lancaster County, Nebraska, who is authorized to conduct transactions, lease property, collect rents, make or order repairs, order or oversee service to dwellings and dwelling units, or receive notices on behalf of the owner.

Unoccupied building shall mean a building that is unattended and is not actively used as a dwelling.

Unsecured shall mean that access to the building may be obtained through open, unlocked, broken, or missing doors or windows of such building in such a manner that access may be gained with little or no damage to any portion of the building. (Ord. 20058 §6; August 11, 2014).

21.09.070 Duty to Register Neglected Building.

(a) The owner of a neglected building shall be required, after written notification from Building and Safety, to register such neglected building with Building and Safety within thirty days of the date of the notice from Building and Safety. Written notification sent pursuant to Section 21.09.110(c) shall be deemed good service. If the owner is a non-resident of Lancaster County, Nebraska, such notice shall be sent by regular first class U. S. mail to the last known address of the owner and shall be deemed good service upon deposit with the United States Postal Service. Service on a resident agent shall be deemed good service on the owner.

(b) The registration shall include the following information:

(1) The correct legal description and address of the premises;
(2) The names, addresses, telephone numbers, and email addresses of the owner or owners;

(3) The names, addresses, and telephone numbers of all known lienholders and all other parties with a legal or equitable interest in the building;

(4) The name, address, telephone number, and email address of the resident agent designated to act on behalf of the owner, except if the owner will be the resident agent;

(5) The period of time the building is reasonably expected to remain unoccupied under the circumstances;

(6) A plan and timetable to bring the building into compliance with Chapters 5.38, 8.22, 8.26, 8.46, or 21.05 of the LMC. Building plans are not necessary for the registration; and

(7) If the owner does not intend to sell, repair, or rehabilitate the building(s), then the owner shall provide a plan for removal or demolition of all buildings and structures, including a reasonable timeline for completion.

(c) A neglected building shall not be deemed registered until all requirements of registration have been satisfied to a reasonable degree as determined by the Director. The Director shall have the authority to deny a registration for the following reasons:

(1) The information supplied by the owner is incomplete, false, fictitious, or inaccurate;

(2) The timetable for bringing the building into compliance is unreasonably long;

(3) The plan for repairs and bringing the building(s) into compliance does not address or correct the violations or deficiencies identified by Building and Safety;

(4) More than two years have passed since the first notice of registration has been served or delivered to the owner or resident agent.

(d) In the event a registration is denied, the Director shall refer the matter to the City Attorney for consideration of further action. The City Attorney may take any reasonable action necessary to enforce this chapter.

(e) In addition to any other remedy permitted in this chapter, in the event an owner fails to timely register a neglected building as required herein, the City may register the building and the registration fees, all penalties, and other consequences that may or shall apply to the owner of the premises due to the owner's failure to register shall be equally enforceable when the building is registered by the City. In the event the City registers a neglected building, such registration shall only require the information set forth in subsections 21.09.070(b)(1), (b)(2) and (b)(3) herein. Notice of such registration by the City shall be sent to the owner and resident agent in the same manner as set forth in Section 21.09.110.

(f) A copy of the notice under Section 21.09.070(a) shall be recorded by the Director in the records of the Register of Deeds for Lancaster County, Nebraska and indexed against the premises.

(g) The owner of any dwelling that has been placarded as an unsafe structure for 21 months or more as of the date of passage of this section shall have 90 days from said date of passage to correct violations and otherwise bring the building(s) into compliance with the LMC.

(h) The Director shall maintain a registration list identifying all properties currently registered with Building and Safety and describing all actions taken with respect to each registered building.

(i) Each registration shall expire at the end of 90 days unless removed from the registration list. If the building has not been removed from the registration list at the expiration of a registration herein, the owner or City shall re-register the building pursuant to this section. (Ord. 20058 §7; August 11, 2014).

21.09.080 Registration Fee.

A registration fee of \$500.00 per neglected building shall be collected, at the time of registration, by Building and Safety. In the event the City registers or re-registers a neglected building, the registration fee shall be paid by the City and shall be a cost for which owner is liable and shall become a lien on the premises as set forth in Section 21.09.100. Accrual of reimbursable registration fees shall be separate from and in addition to any civil penalties permitted in this chapter. The process for accounting for expenses and assessing a lien shall be pursuant to Section 21.05.100. Once registered, a new fee of \$500.00 shall be due and payable for each additional 90-day period thereafter, or portion thereof, as though registered for the first time, until the building is removed from the list or such fee is reduced or waived by the Director. Fees for each additional 90-day period shall become a lien on the premises as set forth in Section 21.09.100. (Ord. 20058 §8; August 11, 2014).

21.09.090 Resident Agent.

(a) The owner of any neglected building which is subject to the registration requirements of Section 21.09.070 shall designate a resident agent for the building. Any owner who lives within Lancaster County, Nebraska may designate himself or herself as the resident agent.

(b) The owner of a neglected building who lives outside of Lancaster County shall name a resident agent who lives within or whose place of business is within Lancaster County, Nebraska.

(c) The designation of resident agent shall constitute an authorization by the owner for the resident agent to act on behalf of the owner with regard to all requirements under this chapter to accept all notices, including all notices pursuant to the LMC, all notices of proposed abatements and all court orders, compliance orders, and administrative orders. Except as described herein, the owner shall be solely responsible for the actions or inactions of the resident agent and may incur criminal and/or civil liability for such actions or inactions of the resident agent. The resident agent shall be responsible for and may incur criminal and/or civil liability to the City pursuant to this chapter only in the event of knowingly providing false or inaccurate information to the City in applications, plans, or other documents provided to the City under this chapter.

(d) The owner's designation of a resident agent shall not relieve the owner of any obligation to comply with the provisions of this chapter or any other provisions of the LMC or laws of the State of Nebraska.

(e) Notices required by this section sent pursuant to Section 21.09.110(c) shall be deemed good service. (Ord. 20058 §9; August 11, 2014).

21.09.100 Registration Penalty; Lien on Property; Assessment Process.

(a) In addition to reimbursing the City for all registration fees paid by the City, any owner who fails to timely register a neglected building, as required by this chapter, shall be liable for a civil penalty not to exceed \$500.00 as determined by the Director.

(b) Each civil penalty herein shall automatically renew for an additional 90 days unless the neglected building is removed from the registration list as set forth in this chapter with new fees assessed as set forth in Section 21.09.080.

(c) If a building continues to meet the definition of a neglected building for a period of more than 90 calendar days after notice is given, or has been registered, and the owner fails or refuses to register or re-register the neglected building after the initial registration expires, or if the City has not been reimbursed for any portion of registration fees paid by the City, or an assessed civil penalty is not paid, the Director may continue to assess a penalty not to exceed \$500.00 for each 90- calendar-day period, or portion thereof, the neglected building continues to be unregistered or the registration fees or civil penalties are not paid. At no time shall the amount of unreimbursed registration fees, civil penalties, and assessments exceed \$4,000.00 per building in a calendar year, but shall be cumulative in following years. The Director may reduce, waive, or stay the imposition of a civil penalty herein for good cause shown by the owner in efforts to comply with this section or an approved plan.

(d) All registration fee reimbursements and civil penalties assessed shall be payable directly to Building and Safety.

(e) The owner of the property at the time any notice under Section 21.09.070 is issued shall be personally liable for all unreimbursed registration fees and unpaid civil penalties and any unreimbursed fees and penalties shall also be a lien on any real property upon which the neglected building is wholly or partially located, from the date of assessment of fees and civil penalties. Interest as allowed by applicable Nebraska law shall also accrue unless reduced, waived or stayed by the Director.

(f) The Director shall develop policies and procedures for the implementation of this penalty.

(g) The Director shall keep an itemized account of the expenses incurred by the City pursuant to this section. For assessment of unpaid fees and civil penalties hereunder, the Director shall prepare and file with the City Clerk a report specifying the actions taken, the itemized and total cost of the actions, a description of the real property upon which the building or structure is or was located, and the names and addresses of the owners of the property.

(h) Upon receipt of said report, the City Clerk shall present it to the City Council for consideration. The City Council shall fix a time, date, and place for hearing said report and any protests or objections thereto. The City Clerk shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in the City, and served by regular first class U.S. mail, postage prepaid, addressed to the owner of said property as the owner's name and address appears on the last equalized assessment roll of the county, if such so appears, or as known to the clerk. Deposit of the notice with the United States Postal Service shall be deemed good service. Such notice shall be given at least ten days prior to the date set for the hearing and shall specify the day, hour, and place the Council will hear and pass upon the Director's report, together with any objection or protests which may be made thereto, and assess such property with such cost. Such assessment shall be a lien upon such property from the date of assessment, shall become delinquent thirty days after the date of assessment, and shall draw interest from said date until paid at the same rate as provided by law for delinquent general real estate taxes. Foreclosure on a lien shall be pursuant to Nebraska law. (Ord. 20058 §10; August 11, 2014).

21.09.110 Procedures for Registration; Notice; Penalty.

(a) Whenever the owner of a neglected building fails to timely register or re-register such building or if the City registers or re-registers a neglected building, a Notice of Registration Penalty shall be issued to the owner within 10 days after the date for registration or re-registration.

(b) A separate Notice of Registration Penalty shall be issued for each subsequent registration fee or civil penalty that may be assessed.

(c) The Notice of Registration Penalty shall be sent to the owner or resident agent by regular first class U.S. mail or personal service and shall be deemed good service upon deposit with the United States Postal Service, if first class mail is used. Service upon the resident agent shall be deemed to be good service upon the owner.

(d) All Notices of Registration Penalty shall be recorded in the offices of the City Clerk and the Register of Deeds for Lancaster County, Nebraska and indexed against the premises. (Ord. 20058 §11; August 11, 2014).

21.09.120 Reinspection.

The Director may periodically reinspect neglected buildings to ensure compliance with this chapter and all applicable court or administrative orders. (Ord. 20058 §12; August 11, 2014).

21.09.130 Removal from Registration List.

(a) A neglected building shall be removed from the registration list and requirements of this chapter by the Director upon such building meeting one or more of the following:

(1) Achieving compliance with all health and safety standards set forth in Chapters 8.22, 8.26, 8.46, and 21.05 of the LMC and all registration fees and penalties have been paid in full;

(2) Removal or demolition by the owner;

(3) Removal or demolition by the City of Lincoln;

(4) Discharge of assessed registration fees and penalties and/or liens upon the property through a foreclosure or other legal process; or

(5) The building is determined to be a dangerous building under LMC Chapter 21.05.

(b) Removal from the registration list shall not result in the reduction, waiver, discharge, release, or other modifications to fees and penalties assessed to the premises except as may be ordered by a court of law with competent jurisdiction or as may be modified by the Director herein.

(c) Upon compliance with the requirements of this chapter and in the event a Notice of Registration Penalty has been recorded with the Register of Deeds for Lancaster County, Nebraska, the Director, within 30 days of the building becoming compliant with the LMC, shall record a Notice of Compliance with the Register of Deeds stating that, as of the date of the Notice of Compliance, the property complies with the LMC.

(d) The Director may remove a neglected building from the list in the event the Director determines that the interests of the City and the purpose of this ordinance are best served by removal. Such a finding or determination shall be in writing and approved by the City Law Department before becoming effective. All such findings or determinations shall be recorded with the City Clerk. (Ord. 20058 §13; August 11, 2014).

21.09.140 Registration Non-transferable.

If the neglected building is required to be registered pursuant to this chapter, a new registration shall be required for each change of ownership of the building. The seller of a neglected building, which is registered with Building and Safety pursuant to this chapter, shall notify Building

and Safety within ten business days after the sale or other transfer or conveyance of any registered property. The Director may waive the requirement of a registration following a conveyance if there is sufficient evidence or reason to believe that action will be taken shortly after the sale to bring the building back into compliance with the LMC or remove or demolish the neglected building. (Ord. 20058 §14; August 11, 2014).

21.09.150 Appeals to Housing Advisory and Appeals Board.

(a) Appeals from any decision or action of the Director of Building and Safety related to this chapter may be made by requesting a hearing before the Housing Advisory and Appeals Board.

(b) The appeal process and time for appeal shall be governed by LMC Section 21.05.210.

(c) Enforcement of any decision or action of the Director shall be stayed in the event a timely appeal is requested pursuant to LMC Section 21.05.210 and shall continue until the administrative appeal process therein is completed. (Ord. 20058 §15; August 11, 2014).

21.09.160 Failure to Reimburse Registration Fees or Pay Civil Penalties.

In the event that any person fails to reimburse the City for registration fees or pay civil penalties assessed herein, the City Law Department is authorized to seek the recovery of all such registration fees and civil penalties by any means allowed by law. In the event the City Law Department intends to foreclose on any liens assessed under Section 21.09.100, notice shall be given to the owner, pursuant to Section 21.09.110, at least 30 days prior to commencement of the foreclosure. This notice provision is waived in the event that such notice would result in the City Law Department being unable to prosecute such foreclosure. (Ord. 20058 §16; August 11, 2014).

21.09.165 Collection and Distribution of Fees and Penalties.

Any collection or reimbursement of fees and costs incurred due to the registration of a neglected building by the City shall be deposited in the General Fund and appropriated to the Problem Resolution Team line item. Any penalties collected herein shall be deposited in the General Fund and distributed pursuant to applicable law. (Ord. 20141 §1; January 26, 2015).

21.09.170 Criminal Violations; Penalties.

Any person upon whom a duty is placed by the provisions of this title who shall fail, neglect, or refuse to perform such duty, or who shall violate a provision of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed \$500.00 or be imprisoned in the county jail for a period not to exceed six months, or both, except that each person so convicted shall be fined in a sum of not less than \$200.00 for the first offense, not less than \$300.00 for a second offense, and not less than \$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 title continues shall constitute a separate and distinct offense and shall be punishable as such. (Ord. 20058 §17; August 11, 2014).