

Ordinance No. 2022-\_\_\_\_\_

**AN ORDINANCE AMENDING ARTICLE 1718  
ENTITLED “VACANT STRUCTURE CODE”**

The City of Morgantown hereby ordains that Article 1718 of the City Code is amended as follows:

**Sec. 1718.01. Adoption and Findings.**

- (a) There is hereby adopted a Vacant Structure Code for the City of Morgantown.
- (b) The City finds and determines that vacant structures within the City can create dangerous conditions when left unmonitored and contribute to additional expenditures of public funds due to responses to complaints occurring at such properties, inspection of such properties in response to service calls and to ensure safety of entrants including building officials; fire protection officers; and law enforcement officers; and that a regular program of registration, inspection, and monitoring of vacant structures is essential to limit harm and expense to the public from such vacant structures.
- (c) The City estimates its annual costs of administering a registration program for vacant structures, excluding inspections, at \$100 per structure due to staff time involved in processing and reviewing applications and addressing property owner questions.
- (d) The City estimates its annual cost of monitoring well-maintained property, excluding annual inspections, at \$0 because such properties generally do not require additional inspections or response to service calls beyond those normally expected at occupied structures.
- (e) The City estimates that its annual cost of monitoring property that is not well-maintained exceeds the cost associated with well-maintained or occupied structures due to increased dangers to entrants, increased need to issue notices of violation or citations to address issues at the property, increased likelihood of the need to obtain entry and inspection of the property, increased likelihood of the need to take direct action at the expense of public funds to correct dangerous conditions at the property or to demolish the structure if it cannot be rehabilitated, and that such costs increase each year the structure remains vacant and unmaintained or poorly maintained.
- (f) The City estimates its annual cost of inspections based on the ordinary actual staff hours worked to perform inspection, and, in appropriate instances, to prepare and obtain a search warrant to gain entry to inspect, as provided from time to time on the Fee Schedule adopted by the City.

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.02. Purpose.**

The purpose of this article shall be to ensure that all vacant structures will be kept weathertight and secure from trespassers, safe for entry by police officers and fire fighters in

times of emergency, and to ensure that the structure and its contents do not present a hazard to the public during the time that the building remains vacant.

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.03. Definitions.**

The following definitions shall apply to this article:

*Building Official* means the director of the City of Morgantown Code Enforcement Department, a code enforcement department as defined by Title 87 West Virginia Code Rule Section 7-2, as it may be amended.

*Code Enforcement Agency Official* means a lawful agent of the City of Morgantown Code Enforcement Department, a code enforcement department as defined by Title 87 West Virginia Code Rule Section 7-2, as it may be amended.

*Compliance Determination* means the written determination by the Building Inspector and Fire Chief, made in their discretion and pursuant to applicable law, that a Vacant Property has been inspected by the Building Inspector and Fire Chief and determined to be in compliance with all applicable safety codes and not to constitute a hazard to entrants or the surrounding area, which will be issued to a property Owner in writing stating the date or dates for which the determination is valid.

*Owner or property owner* means a person who individually or jointly with others:

- (1) Has legal title to the property, with or without actual possession of the property;
- (2) Has charge, care, or control of the property as owner or agent of the owner;
- (3) Is an executor, administrator, trustee or guardian of the estate of the owner;
- (4) Is the agent of the owner for the purpose of managing, controlling or collecting rents; or
- (5) Is entitled to control or direct the management or disposition of the property.

*Vacant building* means a building or other structure that is:

- (1) Unoccupied;
- (2) Unsecured and occupied by one or more unauthorized persons; or
- (3) Is without continuous utility service evidencing actual use of water, sewer, electric, and/or gas service to the building for a period exceeding 90 days, but excluding any new building under construction prior to the issuance of a certificate of occupancy for that building and excluding any building granted an exemption by City Council pursuant to Section 1718.07(c); or
- (4) Partially unoccupied such that more than one entire level or floor of such building is unoccupied and 75% or more of the useable space of such building is unoccupied.

*Vacant property* means a property on which no building is erected and no routine activity occurs.

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.04. Registration.**

- (a) All owners of realty within the City of Morgantown that contain a vacant building, shall register each vacant building with the City's Building Official or his/her designee within 30 days after the structure meets the definition of a vacant building and on each subsequent July 1st when a vacant building is present on the owner(s)' property.
- (b) Registration is required annually, and at the time the vacant structure is registered, the registration form must be accompanied by a registration fee in the amount prescribed by this section. The registration form shall require information from the registrant deemed necessary by the Building Official, Fire Chief, and Police Chief of the City, to ensure that the purpose of this article is met. The contents of the form shall enable City Officers to determine the structural integrity of the building, any repairs necessary to ensure its structural integrity, that it will be safe for entry, and that the building and its contents do not present a hazard to the public. The above-named officers, or their designees, shall have the authority to issue orders to the owner or owner's local agent for corrective action deemed necessary. The Building Inspector and Fire Chief shall rely upon the West Virginia State Building Code and Fire Codes, as well as other applicable law, for guidance during any structural review.
- (c) Registration statement and fees; local agent.
  - (1) A registration statement in the form prescribed by the City must be filed by the owner or owner's local agent for all vacant buildings. Registration and payment of fees does not exonerate the owner, agent or responsible party from penalties for failure to comply with any building, housing, or fire code requirement. One registration statement may be filed to include all vacant buildings of an owner, but a separate fee is assessed for each vacant building.
  - (2) The owner(s) of the property on which a vacant building exists at the time registration is required shall be responsible, jointly and severally, for payment of the non-refundable registration fee; provided, that the City may not collect any amount exceeding the total prescribed fee. The fee shall be due upon registration in the following amount for each vacant building:
    - a. No fee for properties that are vacant for less than one year;
    - b. One hundred dollars per year for properties that are vacant more than one year and that have been inspected by the Building Inspector and Fire Chief and determined to be in compliance with all applicable safety codes and not to constitute a hazard to entrants or the surrounding area. The determination by the Building Inspector and Fire Chief will be made in their discretion and pursuant to applicable law, will be issued to a property owner in writing stating the date or dates for which the

determination is valid, and is referred to in this Article as a “Compliance Determination.”

- b. Five hundred dollars for properties that do not have a valid Compliance Determination and are vacant for at least one year but less than two years;
- c. One thousand dollars for properties that do not have a valid Compliance Determination and are vacant for at least two years but less than three years;
- d. Two thousand dollars for properties that do not have a valid Compliance Determination and are vacant for at least three years but less than four years;
- e. Three thousand five hundred dollars for properties that do not have a valid Compliance Determination and are vacant for at least four years but less than five years; and
- f. Four thousand dollars for properties that do not have a valid Compliance Determination and are vacant for at least five years, plus an additional \$1,000.00 for each year in excess of five years.

(3) If the owner of property on which a vacant building exists does not certify on the registration form that the owner is a resident of the state and capable of accepting service of process related to the vacant building, the registration statement also shall 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 property owners and who shall be designated as a responsible local agent 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 related to the vacant building.

(d) All owners of vacant property within the City of Morgantown, as defined in Section 1718.03 above, shall register the same with the City's Building Official or his/her designee within 30 days after the property meets the definition of a vacant property and on each subsequent July 1st when the property qualifies as a vacant property. Registration is required annually but no registration fee shall be required. A registration statement in the form prescribed by the City must be filed by the owner for all vacant property. Registration does not exonerate the owner or responsible party from penalties for failure to comply with any building, housing, or fire code requirement. One registration statement may be filed to include all vacant property of an owner.

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.05. Inspection; maintenance standards.**

(a) Following registration of a vacant building, the Building Official, Fire Chief, and Police Chief shall determine whether it is necessary for any or all of them to inspect the structure to identify the existence of any public safety issues, or whether an inspection should be performed by a third party retained by the Property Owner. If an inspection is deemed necessary, reasonable efforts will be made to notify the owner of the time and place of inspection. If the owner fails or refuses to consent to and arrange for an inspection, the City

will seek a search warrant from a court of competent jurisdiction to authorize inspection of the premises for the purpose of determining compliance with this article, the structural integrity of the building, the repairs necessary to insure its structural integrity and that it will be safe for entry by building officials, emergency medical technicians or other health care providers, fire fighters, and police officers in time of emergency, and that the building and its contents do not present a hazard to the public during the time that the building remains vacant. The Property Owner will be responsible to pay the cost of each inspection according to the City Fee Schedule currently in effect. If the Building Official determines, consistent with this subsection, that the Property Owner should provide for inspection by a third party, the Property Owner shall be responsible for the cost of obtaining such inspection by a licensed, qualified inspector and providing the report of such third party to the Building Official within three (3) months of the delivery of notice of the determination that a third party inspection is required. Additional inspections of any vacant building or vacant property may be conducted according to these procedures when such inspection is deemed necessary by the Building Official, Fire Chief, and Police Chief.

- (b) The owner of each vacant building or vacant property shall maintain it in compliance with all applicable laws and codes, including without limitation the Fire Code and Building Code.

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.06. Corrective action.**

- (a) The owner(s) or local agent of an owner of a vacant building or vacant property shall be notified in writing of any corrective action deemed necessary by City Officials. The notice shall describe the corrective action required, identify the laws or regulations violated by the current condition, and identify a reasonable time period in which the corrective action must be taken by the owner or his agent.
- (b) The notice of corrective action shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of the notice may be made by a Code Enforcement Agency Official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure and delivery of the notice is refused, the Code Enforcement Agency Official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the notice is presumed to have been effectuated.
- (c) If the owner fails to take the corrective action upon expiration of the time period specified in the notice, the City may, but shall not be required to, act to bring the vacant building or vacant property into compliance with the standards set forth in this article, or otherwise eliminate the public nuisance caused by any noncompliant conditions.
- (d) The cost of any and all repairs, demolition, or maintenance, and all related legal and administrative costs, incurred by the City in the enforcement of this section shall be paid to the City by the owner. The City may institute civil proceedings to collect any such costs.

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(Supp. No. 3)

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.07. Right of appeal.**

- (a) A property owner may challenge any determination made as to the property owner's vacant building or vacant property pursuant to this article by filing an administrative appeal with the City Manager on forms to be prescribed by the City. In general, an appeal is filed for the purpose of claiming that a structure is not a Vacant Building as defined by this Code, while an Exemption Request is filed for a structure that the Property Owner agrees is a Vacant Building but would like to avoid registering because the structure cannot be occupied for a certain limited period of time. The appeal must be filed within ten days of delivery of notice of the determination challenged and shall describe with particularity all objections thereto. The burden of proof shall be on the property owner to show that the determination was incorrect and contrary to law, in whole or in part. The City Manager shall review the appeal and provide for any necessary hearing, render a decision on the appeal and promptly notify the property owner of such decision in writing, all within a reasonable time. During the pendency of the administrative appeal, any time period given to the property owner to take corrective action shall be tolled and the City shall not take any action to enforce the determination subject of the appeal except to address an emergency condition presenting an imminent danger to the life, health, or safety of the public. The City Manager may prescribe regulations and forms as necessary to implement the provisions of this section.
- (b) Any property owner whose appeal is denied, in whole or in part, may file an appeal to the Monongalia County Circuit Court within 30 days of the date the decision on the appeal is issued.
- (c) The City Council, on a case-by-case basis, upon request by the property owner, shall exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determinate period of time. In order to obtain such exemption, the property owner shall submit a written request for exemption to the City Manager for delivery to the City Council stating all reasons showing good cause that the building cannot be occupied and identifying the time period for which it cannot be occupied. City Council shall consider the request at its next regular meeting for which notice of the request can be adequately provided in accordance with the law, or at a special meeting called for that purpose, and may continue the hearing as the Council deems appropriate. The Council may prescribe regulations and forms as necessary to implement the provisions of this section.

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.08. Enforcement; liens.**

- (a) In addition to any other rights conferred by law, the City may institute a civil action against the property owner to enforce the provisions of this article and to collect any unpaid and delinquent vacant building registration fees.

- (b) In addition to any other rights conferred by law the City may, without instituting a civil action, file a lien on any real property for which there are unpaid and delinquent vacant building registration fees upon compliance with the notice provisions of this section.
- (c) Before any lien is filed, the City shall give notice to the property owner or local agent of the property owner by certified mail, return receipt requested, that the City will file the lien unless the delinquent fees are paid by a date stated in the notice, which date shall be no less than 30 days from the date the notice is received by the property owner or local agent of the property owner. The date of receipt shall be the date of delivery shown on the signed certified mail return receipt card.
- (d) If service cannot be obtained by certified mail as provided in Paragraph (c), above, the City may file a lien after obtaining service pursuant to the provisions of Section 1718.06(b), provided that no additional attempt to make service by certified mail shall be required.

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.09. Deposit and expenditure of fees.**

All fees received pursuant to this article shall be deposited by the City into a separate account, which shall be used for the following purposes:

- (1) To improve public safety efforts, especially for police and fire personnel, who most often contend with the dangerous situations manifested in vacant properties;
- (2) To monitor and administer this section; and
- (3) To repair, close or demolish a vacant structure as authorized by Section [1718.06] of this article.

(Ord. No. 17-42, 10-17-2017)

**Sec. 1718.99. Penalty.**

- (a) Any person who fails to comply with the provisions of this article, or fails to take the corrective action required by this article, shall be guilty of a misdemeanor, punishable by a fine of no more than \$500.00. Each day that a violation continues shall be deemed a separate offense.
- (b) Any person who interferes with or fails to allow inspection of a property subject to inspection under this Article shall be guilty of a misdemeanor, punishable by a fine of no more than \$500.00. Each day that a violation continues shall be deemed a separate offense
- (c) Any person who fails to comply with an order issued by an official having authority to make such order under this Article shall be guilty of a misdemeanor, punishable by a fine of no more than \$500.00. Each day that a violation continues shall be deemed a separate offense

(d) Any person found guilty of a second violation of this Article within any 12-month period shall be subject to a fine of no less than \$250.00 nor more than \$500.00 for such offense.

(e) Any person found guilty of a third violation of this Article within any 12-month period shall be subject to a fine of \$500.00 for such offense.

(Ord. No. 17-42, 10-17-2017)

This ordinance shall be effective \_\_\_\_\_ days after its adoption.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_