

ORDINANCE BILL NO. 13 FOR 2020

ORDINANCE NO. ____

SWEET HOME ORDINANCE PERTAINING TO THE REGISTRATION, MAINTENANCE, SAFETY, AND SECURITY OF VACANT COMMERCIAL AND INDUSTRIAL BUILDINGS

WHEREAS, the City of Sweet Home desires to preserve and protect the habitability and promote the productive use of real property in the City, and to protect the city from blight by requiring that vacant commercial and industrial properties be adequately secured and maintained.

NOW THEREFORE,

The City of Sweet Home does Ordain as follows:

Section 1. Sweet Home Municipal Code Chapter 8.20 titled VACANT COMMERCIAL AND INDUSTRIAL BUILDINGS is created to read as follows:

§8.20.010 Purpose and Applicability.

This chapter is enacted for the purpose of preserving and protecting the habitability of commercial and industrial real property in the City, and the peaceable, safe, sanitary, and secure occupancy, and productive use of commercial and industrial real property in the City. The provisions in this chapter shall apply only to buildings in commercial and industrial zones, according to the most recent City of Sweet Home zoning map.

§8.20.020 Definitions.

As used in this chapter, except where the context indicates otherwise, the following definitions apply:

"Abandoned building" means:

1. A building that is both vacant and subject to either pending judicial execution sale under ORS 18.901 et seq., or to nonjudicial foreclosure pursuant to ORS 86.752 et seq.; or
2. A building that is both vacant and subject to either a judicial execution sale under ORS 18.901 et seq., or nonjudicial foreclosure pursuant to ORS 86.752 et seq. where legal title is retained by the beneficiary(ies) of a foreclosed trust deed or was otherwise transferred to beneficiary(ies) pursuant to a deed in lieu of foreclosure.

"Building" means a site-built or manufactured structure, including mobile homes, built to the support, shelter or enclosure of persons, animals, chattels or property of any kind

and having a fixed base on or fixed connection according to the uniform building code standards.

"Chief" means the chief of police of the Sweet Home police department, or designee.

"City Manager" means the City Manager of the City of Sweet Home, or designee.

"Code enforcement officer" means a code enforcement officer of the City of Sweet Home.

"Commercial building" means a nonresidential building constructed or used for purchasing, selling or conducting other transactions involving the handling or disposition of any article, substance, commodity or services for livelihood or profit, and places where commodities, services or merchandise are sold or agreements are made to furnish them.

"Foreclosed building" means a building upon real estate that an owner obtains as a result of:

1. Foreclosing a trust deed on the real estate;
2. Obtaining a judgment foreclosing a lien on the real estate;
3. Purchasing the real estate at a trustee's sale or a sheriff's sale; or
4. Accepting a deed to the real estate in lieu of foreclosure.

"Industrial building" means a nonresidential building constructed or used for manufacturing, processing, compounding, packaging or assembling of products.

"Lender" means any person who makes, extends, or holds a real estate loan agreement and includes, but is not limited to, mortgagees, beneficiaries under trust deeds, vendors under conditional land sales contracts, trustees, and a successor in interest to any mortgagee, beneficiary, vendor, or trustee. The term also includes any mortgagee, beneficiary, or trustee that accepts a deed in lieu of foreclosure.

"Local" means within thirty (30) miles of a building.

"Natural person" means a real human being, as opposed to a legal person, which may be a private or public organization.

"Owner" means any person holding or claiming to hold any legal title or interest in real property, including, but not limited to, a fee owner, a mortgagee in possession, a vendee under a land sale contract, or a beneficiary under a deed of trust.

"Person" means any natural person, association, partnership, or corporation, or other form of legal entity or entity in fact capable of owning or using property.

"Premises" means real estate, including that upon which a building is located or constructed, that is in the same ownership as the building, and that a reasonable person would associate with ownership or use of the building when viewing the building and premises from outdoors. Where there is more than one building on premises, or where

multiple buildings on premises are owned by different owners, the premises are common to each building. Premises are often, but not always, defined by tax lot lines or recorded legal descriptions.

"Real property" means any real property, including, but not limited to, lots, parcels, tracts, premises, buildings, houses, rooms, structures, or any separate part or portion thereof, whether temporary or permanent, and whether or not on the ground itself, and any conveyance or any part or portion thereof.

"Tenant" means a residential tenant as defined by the Oregon Residential Landlord and Tenant Act, and any other person, organization or business holding real property under the terms of a rental agreement.

"Vacant" means:

1. Lack of building habitation or use, or abandonment of habitation or use; or
2. Use of a building, either intermittent or continuous, by persons with no legal right to be present.

"Vacant building" means:

1. A building, or substantial portion thereof, that is unoccupied or has not actively been furnished and so used as a place of business, employment, residence, or other human activity, for more than fifteen (15) days. This includes manufactured structures and mobile homes, whether located in a mobile home park or not. A vacant building also includes any building under construction where no substantial work has taken place for more than sixty (60) days. "Vacant building" does not include a building designed for storage, intermittent or similar types of use, if such building is secure from unauthorized entry, in good repair, and does not otherwise constitute a nuisance; or
2. A building where one or more conditions is present, either singularly or in combination, that would lead a reasonable person to conclude that the building is vacant. Such conditions include, but are not limited to:
 - a. Overgrown or dead vegetation at the property;
 - b. Accumulation of newspapers, circulars, flyers, mail, or similar items;
 - c. Past due utility notices or disconnected utilities;
 - d. Accumulation of trash, junk, or debris;
 - e. Absence of furnishings or other items typically found inside a residential, industrial, or commercial building as the case may be;
 - f. Evidence of criminal mischief or criminal trespass; or
 - g. Statements or other evidence supplied by neighbors, delivery agents, passersby, or government employees, that the building is vacant
3. For the purposes of this ordinance, a building with an active building permit is not considered vacant.

§8.20.020 Registration.

- A. A building owner shall register the building with the City Recorder in the event:

1. Of an anticipated judicial foreclosure of the property, no earlier than the commencement of any of the actions described by ORS 18.904, 18.906, 18.908 (2017) and not later than the date first set for the execution sale described in ORS 18.930 (2017);
 2. Of an anticipated nonjudicial foreclosure of the property under ORS 86.752 et seq. (2017) not later than the date of service or mailing of the notice of sale described in ORS 86.764 (2017);
 3. That the owner becomes aware that the building is vacant, as defined in this chapter; or
 4. The owner receives written notice from the code enforcement officer that the code enforcement officer believes the building is a vacant building, abandoned building, or foreclosed building.
- B. Each registration shall be made on a form approved by the City Manager and shall contain, at a minimum:
1. If subsection A.1 or A.2 applies, then:
 - a. The name of the lender;
 - b. The address of the vacant building;
 - c. Legal description and tax parcel identification number of the property per the county assessor's records;
 - d. The date the property became vacant or the lender took legal possession;
 - e. The direct address of the lender and post office box, if applicable (post office boxes alone are not acceptable);
 - f. A direct contact name and telephone number for the lender;
 - g. If the lender does not reside in or have a business office in the City, then the name, mailing address, telephone number, and email address of a local individual or entity charged with responsibility by the trustee, mortgagee, or beneficiary, for ensuring compliance with the obligations imposed by this chapter; and
 - h. A person or entity appointed by the lender who resides in or has a business office in the City, who is authorized to receive service of process, if applicable.
 2. If subsection A.3 applies, then:
 - a. The name of the owner(s);
 - b. The address of the vacant building;
 - c. Legal description and tax parcel identification number of the property per the county assessor's records;
 - d. The date the property became vacant or the owner took legal possession;
 - e. The direct address of the owner(s) and post office box, if applicable (post office boxes alone are not acceptable);
 - f. A direct contact name and telephone number for the owner(s);
 - g. If the owner does not reside or have a principal office in the City, the name, mailing address, telephone number, and electronic mail address of a local agent for the owner(s).

- C. Each registration must be accompanied by a payment of a registration fee in an amount to be set by Council resolution.
- D. The City Recorder or designee shall maintain a list of registered buildings and deliver a copy thereof to the code enforcement officer upon request.
- E. The City Recorder or designee shall share all registration information with the Police Department, and all vacant properties shall be enrolled in the Police Department's Property Watch program.
- F. If ownership of a registered building changes, the registrant shall send notice of the change to the City Recorder within thirty (30) days of the change.
- G. The registration is valid for one year. The property owner or lender must secure a new registration annually if the property remains vacant.
- H. An owner or lender who has registered a property under this chapter must report any change of information contained in the registration to the City within 10 business days of the change, including but not limited to any change in ownership or designation of a responsible person.
- I. Properties subject to this chapter shall remain under the registration requirement as long as the property remains vacant.

§8.20.030 Maintenance.

- A. Every owner of an abandoned building, foreclosed building, or vacant building shall cause the building and premises to be maintained in a generally well-kept condition, at least consistent with conditions found on surrounding or nearby occupied property, and including all of the following:
 - 1. Ensuring that the condition of the subject property does not constitute a public nuisance or a chronic public nuisance as described by the code.
 - 2. Keeping the premises free of weeds, dead vegetation, graffiti, trash, accumulated newspapers, circulars, flyers, discarded personal items, and other items or conditions that would cause a reasonable person to suspect the building or real property is vacant or abandoned.
 - 3. Regular watering, irrigation, cutting, pruning, and mowing of the lawns and other vegetated areas of the subject real property and the removal of all trimming and debris resulting from such work.
 - 4. All fences and gates shall be maintained in sound condition and in good repair.
 - 5. Foundations, basements, cellars and crawlspaces shall be maintained in sound and watertight condition, adequate to support the building, and protected against the entry of rodents or other animals.
 - 6. Exterior walls shall be free of holes, breaks, loose or rotting boards or timbers, and any other condition which might admit rain or dampness to the interior portions of the walls or the interior spaces, and shall be protected against the entry of rodents or other animals.
 - 7. Exterior windows and doors shall be maintained in sound condition and good repair, with hardware for locking and the locking mechanism maintained in property functioning condition.
 - 8. Any window which is broken, cracked, or missing glass or glazing shall be replaced and maintained in good repair.

9. All graffiti shall be promptly covered or removed.
- B. Compliance with this section does not relieve a person of any obligations imposed by state law, other sections of this code, or any covenants, conditions, and restrictions that apply to the building or premises.

§8.20.040 Security.

- A. Every owner of an abandoned building, foreclosed building, or vacant building, shall cause the building to be secured (including closure and locking of windows, doors, gates and other opening(s) allowing access to the building) and thereafter maintained so as not to be accessible to unauthorized persons.
- B. The owner shall post notice which provides, at a minimum, a direct contact name and a telephone number available twenty-four (24) hours a day for persons to report problems or concerns with the building or real property. The following standards apply to this notice:
 1. The telephone number listed in the notice must:
 - a. Be answered, or reasonably likely to be answered, by a human being during the hours of eight a.m. and five p.m., local time;
 - b. Be connected to a voicemail system that records calls between the hours of five p.m. and eight a.m., local time, if no human is available to answer the phone; and
 - c. Be a domestic number or a toll-free number but not an international number.
 2. The notice must be placed on the interior of a window facing the street to the front of the property so the notice is easily decipherable from outside of the building. If no such area exists, then the posting must be placed on the exterior of the building in a location visible from the street to the front of the property. An exterior posting shall be constructed of and printed with weather-resistant materials.
 3. The notice shall be printed in a typeface at least eighteen (18) points in size, and must list the name and contact information of the owner(s) or local individual or entity charged with complying with this chapter, along with the following phrases completed with the appropriate identification and contact information:

"THIS PROPERTY OWNED/MANAGED BY: ."

"TO REPORT PROBLEMS OR CONCERNS CALL ."

§8.20.050 Inspection.

- A. Every owner of an abandoned building, foreclosed building, or vacant building shall inspect the building and premises no less than twice monthly to verify the requirements of this chapter, and any other laws applicable to the building, are being met.
- B. The owner or agent inspecting the property shall record and present to the City Manager, code enforcement officer or designee (upon request) the dates of inspection in a form to be provided by the City.

§8.20.060 Local Presence or Property Management Required.

- A. If an owner or lender has no local presence, as defined in this chapter, that owner or lender shall contract with a local person or property management company in order to ensure compliance with this chapter.
- B. An 18-inch by 24-inch notice shall be posted by the owner or responsible person identifying a local direct contact name and 24-hour contact phone number for persons to report problems or concerns, and the posting shall be placed on the interior of a window facing the street to the front of the property so it is visible from the street. If no such area exists, then the posting shall be placed on the exterior of the property in a location visible from the street to the front of the property. An exterior posting shall be constructed of and printed with weather resistant materials.
- C. If an owner fails to comply with the requirements of this chapter within fifteen (15) days after receiving notice that the Code Enforcement Officer believes that the property is vacant, then the owner(s) or lender(s) shall contract with a property management company, to perform the inspections outlined in SHMC §8.20.050 and verify that the maintenance and security requirements of SHMC §8.20.030 and SHMC §8.20.040 are being carried out.
- D. A property management company retained under this section must post the notice described in SHMC §8.20.040(B).
- E. Nothing in this chapter prevents a local owner(s) from contacting with a property management company to assist the owner in meeting the owner's responsibilities under this chapter.

§8.20.070 Additional Authority.

The code enforcement officer may require, with City Manager approval, an owner(s) or lender to implement any additional maintenance listed below:

- A. Installation and operation of additional security lighting;
- B. Increased frequency of property inspections; and
- C. Employment of an on-site security guard.
- D. Any other measures as may be reasonably required to prevent the decline of the property.

§8.20.080 Additional Remedies; Lien Against Real Property.

- A. In addition to other penalties or enforcement specified in this chapter, if a lender or owner(s) fails to register the building or premises as provided in this chapter, the code enforcement officer may give notice of such failure by certified mail. The notice shall:
 - 1. Be directed to all persons shown on the assessor's records or otherwise known to the City to be the owner(s);
 - 2. Refer to the real property involved with convenient certainty, a building's street address, if any, being sufficient; and
 - 3. Notify the owner to comply with the registration requirements in this chapter within fifteen (15) days of mailing.

- B. If a lender or owner(s) fails to maintain, inspect, or secure the building or premises as provided in this chapter, then notwithstanding whether the premises is registered, the code enforcement officer may give notice and abate such conditions as follows:
1. Give written notice to the owner that includes the following:
 - a. A statement that the code enforcement officer has evaluated the building as being a vacant building pursuant to the definition of "vacant building" set forth in SHMC §8.20.020, along with a statement of the reasons why the building has been so evaluated;
 - b. A reference to the building with convenient certainty, a building's street address, if any, being sufficient;
 - c. Notice of the deficiency in maintenance, inspection, or security that has been observed, and direction to comply with the maintenance, inspection, and security requirements of this chapter within seventy-two (72) hours of the time described in subsection B.2.a;
 - d. Notice that if the condition is not corrected within seventy-two (72) hours, the City may cause the real property to be maintained, inspected, or secured, as provided in this chapter and will charge the costs to the lender or owner(s) and register the same on the City's lien docket against the real property. This subsection B.1.d constitutes the authority needed for the City to so maintain, inspect, or secure property to the standards of this chapter.
 2. A copy of the notice described in subsection B.1 must, at a minimum, be:
 - a. Posted to the front door of the building, or to that side of the building fronting the most well-traveled street adjacent to the building, with the date, time of day, and name of the person posting the notice written on the front of the document in permanent ink;
 - b. Mailed, at least three business days before abatement, to the owner or owners at their last-known mailing addresses on record with the Linn County Assessor's office on the date of posting or available from Title Company or other documents, by certified mail, no later than the date the real property is posted. If no mailing address is of record with the assessor's office or known to the Sweet Home police at the time of posting, then a good faith effort to locate an address for an owner or owners, conducted on or before the day the notice is posted, will satisfy this section.
 3. The code enforcement officer shall make a good faith effort to locate the telephone number of the owner, and call the owner on the day notice is posted and give a person reasonably appearing to be meaningfully connected to the real property oral notice that the building has been evaluated as vacant and that there are seventy-two (72) hours to secure or maintain the building, as the case may warrant. Efforts to locate phone numbers and call the owner qualify as good faith if they are reasonable under the circumstances then existing.

4. Notices mailed under subsection B.2.b must be placed in the mail three business days before commencement of City abatement activity under this chapter. For this purpose, a business day is any day except a Saturday, Sunday, or a legal holiday observed by the state of Oregon under ORS 187.010 and 187.020.
 5. If the building is registered with the City then the code enforcement officer must also send the notice required under subsection B.2.b to the lenders listed in the registration materials. The code enforcement officer will send this notice concurrently with the notice required under subsection B.2.b.
 6. If the building is not registered with the City, then the code enforcement officer may send a courtesy copy of the notice required under subsection B.2.b to one or more lenders if the lenders have an ownership interest in the property, as opposed to a mere security interest, and if the code enforcement officer has actual knowledge of the ownership interest on the day the code enforcement officer sends the owner notice under subsection B.2.b. This provision does not create or impose a duty on the code enforcement officer or any other City employee, official, or agent to receive or collect information about lenders or to send courtesy notice to a lender.
- C. Nothing in this section obligates the City to remedy the problem conditions alleged in the code enforcement officer's letter without charging the cost of such abatement as a lien against the real property on which the building is constructed. The total cost of such abatement, including but not limited to time of City employees or contractors, materials, expenses, overhead, and legal fees and costs, shall be included in such lien filing.
- D. The City Manager, at or near the time Council passes this vacant building ordinance or any amendment thereto, shall promulgate a press release that announces passage of the legislation. A press release is adequately promulgated under this section if it is directed to the media sources customarily contacted by the City Manager for distributing newsworthy City information. Failure of or disagreements about compliance with this subsection supply no defense in any action.

§8.20.090 Penalty.

- A. Any person who violates any provision of this chapter may be prosecuted and penalized under SHMC Chapter 9.36
- B. Each day a violation is allowed to persist by a lender or owner(s) constitutes a separate occurrence.

§8.20.100 Duties Joint and Several.

Where a building or premises is owned by more than one person, any duty created by this chapter is joint and several as to all owners.

§8.20.110 Appeals.

- A. A lender or owner who is required to implement additional maintenance or security measures as provided for in SHMC §8.20.070 shall have the right to appeal to the municipal court by filing a petition for a hearing before the court with the court clerk. Additionally, a lender or owner who has received a notice of abatement outlined in §8.20.080(B), may, within fifteen (15) days after mailing of such notice, may likewise appeal to the municipal court for relief by filing a petition.
1. Such petition must include:
 - a. A copy of the code enforcement officer's notice;
 - b. Facts upon which petitioner relies for relief from the obligations of this chapter relative to the building or premises;
 - c. The petitioner's signature, telephone number, and mailing address. If a petitioner is not a natural person, a natural person must sign the petition on behalf of the petitioner and provide his or her mailing address and direct telephone number; and
 - d. The payment of a filing fee, if any is established by City Council from time to time for the petition.
 2. If the municipal court finds that strict compliance with this chapter would cause a real and unnecessary hardship upon the petitioner, then the court may relieve the petitioner of one or more obligations of this chapter.
 3. Filing a petition under this subsection does not:
 - a. Relieve an owner(s) or lender from complying with any requirement of this chapter, including requirements listed in posted or mailed notices;
 - b. Stay City abatement of a building or premises under other City ordinances;
 - c. Require the City to reverse, cancel, or undo any abatement action or effort completed, planned, or in progress at the time the petition is filed; or
 - d. Avoid any abatement cost or lien, whether or not the cost or lien has been calculated or, if calculated, charged against real property.
 4. Any relief granted under this section operates only upon an owner or lender listed as a petitioner.

Passed by the Council and approved by the Mayor this ___ day of _____, 2020.

Mayor _____

ATTEST:

City Manager – Ex Officio City Recorder