

VACANT PROPERTY REGISTRATION PROGRAMS: A NEW APPROACH TO MANAGING THE FORECLOSURE CRISIS IN NORTH CAROLINA

Brooks Rainey Pearson
Master's Project

University of North Carolina at Chapel Hill
Department of City and Regional Planning
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EXECUTIVE SUMMARY

The economic downturn and attendant mortgage foreclosure crisis have exacerbated the problem of vacant properties at a time when market demand has been insufficient to absorb the extra stock. Vacant or abandoned properties create costly problems for municipalities. They destabilize neighborhoods by contributing to crime and create an impediment to individual neighborhood redevelopment by lowering the livability of neighborhoods and reducing property values. They are vulnerable to fires, floods and other disasters. Vacant properties create a drain on city finances, with property tax revenues falling as demand for government services, such as police patrols and code enforcement, are increasing.

In response to the blighting influence and expense of vacant and foreclosed homes, local governments throughout the United States have begun to enact vacant property registration (“VPR”) ordinances. Registration ordinances typically require owners of properties that have become vacant or abandoned for a certain length of time to register formally with the local government. Registration provides the local government with a point of contact for regulation and holds the owner to certain safety and maintenance standards. Such ordinances often include fees for registration and penalties for failure to comply, which offset the regulatory and administrative costs of the program.

North Carolina’s history of strict statutory interpretation under Dillon’s Rule combined with the fact that the relevant statutes overlap and sometimes contradict each other creates a confusing environment for constructing coherent policy. Despite these difficulties, in December of 2009 the town of Warrenton adopted North Carolina’s first VPR ordinance. Hickory has also considered the possibility of a vacant property registration program to supplement their efforts to manage vacant properties in their town, but have yet to move this plan forward. Other North Carolina municipalities are likely to follow.

In Chapter One of this paper I will discuss what led to the recent rise in vacant properties throughout North Carolina and how vacancies affect a municipality and its citizens. I will also discuss the challenges of implementing a VPR program in North Carolina. In Chapters Two I will detail the methodology used in undertaking this project. In Chapters Three and Four I will examine Hickory and Warrenton’s efforts to manage vacant and abandoned properties in their town. In Chapter Five I will present a strategic approach to developing a VPR ordinance in North Carolina based on the case studies of Hickory and Warrenton, a thorough analysis of VPR ordinances throughout the southeast and my understanding of North Carolina law.

CHAPTER ONE: INTRODUCTION

The foreclosure crisis and the rise in vacant properties

The foreclosure crisis in the United States is expected to peak in 2010, and normal foreclosure rates are not expected to return until the end of 2012.¹ The numbers are startling. In January 2010, foreclosure filings were over 300,000 for the eleventh straight month.² At the end of 2009, a record setting fourteen percent of homeowners with a mortgage were either behind in their payments or in foreclosure.³ This year as many as four million homes are expected to enter foreclosure.⁴ A growing percentage of people with delinquent loans are those traditionally considered creditworthy and whose mortgages are insured by the Federal Housing Administration.⁵

Although North Carolina has not suffered the worst of the foreclosure crisis⁶, the state is expected to experience a 10-20% increase in foreclosure starts throughout 2010 due to subprime mortgage rate resets and spillover from the broader economic crisis in the state.⁷ The North Carolina Commissioner of Banks reported 66,367 foreclosure starts in North Carolina in 2009, an increase of 31% (or 15,523 additional foreclosure starts) as compared to 2008.⁸

Unemployment remains a big driver of the problem, as is evidenced by the fact that spikes in foreclosures closely follow spikes in unemployment. North Carolina's unemployment rate has hovered around 11% since February 2009⁹, and 70% of North Carolina counties are currently in double-digit unemployment¹⁰. Further contributing to the problem are "under water" homeowners, who carry mortgage debt that exceeds the current market value of their home. Of 1.4 million North Carolina mortgages examined at the end of the second quarter of 2009, 23% were under water.¹¹ Selling or refinancing an under water home is often not an option, because the proceeds will not be sufficient to

¹ RealtyTrak. Trend Center [Data File]. Retrieved from: <http://www.realtytrac.com/News-Trends/>

² Ibid.

³ Merle, R. (2009, November 20). Problem mortgages hit new high at fourteen percent. The Washington Post. p. B4.

⁴ Ibid.

⁵ Ibid.

⁶ In August 2009, North Carolina's rate of foreclosure filings ranked 29th in the nation. See "NC Foreclosure Help: An Official Site of the State of North Carolina," Retrieved from:

<http://www.ncforeclosurehelp.org/Research.aspx>

⁷ North Carolina Department of Commerce. North Carolina Neighborhood Stabilization Program Action Plan. Retrieved from: <http://www.nccommerce.com/NR/rdonlyres/4D062E9E-C3A8-4529-92B1-30472A3E82BF/0/ActionPlanUpdated.pdf>.

⁸ The Center for Community Capital at the University of North Carolina at Chapel Hill. Foreclosure Start Hotspots. Retrieved from: <http://ncforeclosurehelp.org/global/docs/AOCReportingHotspots.pdf>

⁹ The Employment Security Commission of North Carolina. State's Unemployment Rate Unchanged At 11 Percent. Retrieved from: http://www.ncesc1.com/pmi/rates/PressReleases/State/NR_July09_StRate.pdf.

¹⁰ Ibid.

¹¹ First American CoreLogic. Negative Equity by State Chart Retrieved from:

http://www.loanperformance.com/infocenter/library/FACL%20Negative%20Equity_final_081309.pdf

repay the mortgage debt, and because banks will not refinance homes for which the value is less than the debt to be refinanced.¹² Some homeowners in this situation abandon their homes, and others are forced out in foreclosure proceedings. For the municipality, the end result is the same: a vacant property.

The effect of vacant properties on a community

Vacant or abandoned properties create costly problems for the owners of surrounding properties by lowering the livability of neighborhoods and reducing property values. A Chicago study found that an occupied home within 500 feet of a singled abandoned house will lose close to one percent of its value each year, and that the collective cost to neighbors within a 150 degree radius amounts to a \$220,000 loss in terms of capital depreciation.¹³ Homeowners in close proximity to abandoned properties are often charged high insurance premiums due to the neighborhood instability created by vacant properties.

Vacant properties also bring about costly problems for municipalities. They create a drain on city budgets, with property tax revenues falling as demand for government services, such as police patrols and code enforcement, are increasing. In Austin, Texas, blocks with vacant buildings had 3.2 times as many drug calls to police, 1.8 times as many theft calls, and twice the number of calls for violent behavior as those neighborhoods without vacant properties.¹⁴ The cost of demolishing and/or cleaning up vacant properties is astronomical, ranging from \$800,000 annually in Detroit to over \$1.8 million in Philadelphia.¹⁵ Vacant Properties create public safety concerns, as they are vulnerable to fires, floods and other disasters. There are more than 12,000 fires in abandoned structures annually, resulting in over \$73 million in property damage.¹⁶

Mitigating the Effects of Vacant Properties

North Carolina has attempted to stem the flow of foreclosures through legislation that provides counseling and assistance to homeowners and through the regulation of loan services.¹⁷ Even with such support, local governments are limited in their ability to change the economic or foreclosure landscape. In this climate, they are increasingly turning to property management initiatives to mitigate the negative effects of vacant properties. Local government initiatives that are being attempted throughout the nation include facilitating redevelopment or reuse of abandoned properties, increasing police presence

¹² Mulligan, C. T. (2009). Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration, *Campbell Law Review*, 32(1).

¹³ Immergluck, D. and Smith, G. (2006). The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values, *Housing Policy Debate*, 17, 57-58.

¹⁴ National Vacant Properties Campaign. (2005). Vacant Properties: The True Cost to Communities.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Mulligan, C. T. (2008). Economic and Community Development. School of Government, UNC-Chapel Hill.

in affected areas, buying and holding abandoned properties (“land banking”) and executing aggressive code enforcement.¹⁸

Municipalities will receive some help in funding such initiatives from the federal government. For example, North Carolina was allocated over \$57 million in Neighborhood Stabilization Program grants,¹⁹ the great majority of which has been distributed through a grant program administered by the North Carolina Department of Commerce. Federal funding, though helpful, is not enough to cover the needs of communities regarding vacant properties, nor will it reach all localities. Where funding falls short, local governments must turn to cost effective approaches such as code enforcement. This approach can be implemented quickly, which is essential.

Early intervention is important to reduce the costs of a vacant property to the surrounding community. The “broken windows” sociological theory explains that the condition of a house in decline will deteriorate more quickly once it is in a visible state of disrepair.²⁰ This theory suggests that a few houses in a visible state of disrepair can hasten the decline of an entire neighborhood. Eliminating visible signs of vacancy of individual properties can help to slow the decline of entire communities.

Vacant Property Registration Programs

One approach to managing vacant properties that local governments have been turning to in increasing numbers is the Vacant Property Registration (“VPR”) program. VPR programs are a relatively simple regulatory tool that can be used as part of a comprehensive vacant property strategy to help mitigate the damage of vacant properties and to recover associated costs. Registration ordinances require owners of properties that have become vacant or abandoned for a certain length of time to register formally with the local government. They provide a point of contact in case the property becomes a public nuisance, and may encourage the owner to devise a timely rehabilitation plan by imposing fees to help cover the estimated costs for city departments to monitor, inspect, and re-inspect the property routinely.

¹⁸ Mulligan, C. T. (2009). Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration, *Campbell Law Review*, 32(1).

¹⁹ U.S. Department of Housing and Urban Development. (2008, September 26) Statewide Sum of Grants—Neighborhood Stabilization Program. Retrieved from: <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/statewideallocations.xls>.

²⁰ Wilson, J. and Kelling, G. (1982). Broken Windows: The Police and Neighborhood Safety. *Atlantic Monthly*. See also Kelling, G. and Coles C. (1996). *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*.

There are two major types of vacant property ordinances: the Classic Vacant Property Ordinance and the Home Foreclosure Ordinance.²¹ The Home Foreclosure Ordinance holds the lender and mortgage servicer responsible for registration during the mortgage foreclosure process. This approach is often called “The Chula Vista Model.” Chula Vista, California’s Abandoned Property Registration and Maintenance Ordinance was one of the nation’s first vacant property registration programs and is one of the most well known. It requires lenders to act on the “Abandonment and Waste” clause within their mortgage contract, which gives lenders the authority to enter onto vacant abandoned property and secure and maintain the property against vandalism and deterioration. This ordinance requires lenders to register the property with the City, hire a local property management company for maintenance and post their name and contact information on the exterior of the property.²²

The Classic Vacant Property ordinance, in contrast, is not triggered by the foreclosure process, but applies whenever a building becomes vacant for any reason. This approach regulates all types of vacant and abandoned properties, both with and without structures, and applies to a wide range of properties, including multi-family properties and commercial properties.²³ The classic approach is often called “The Wilmington Model.” Wilmington, Delaware’s vacant property registration ordinance operates on a sliding annual fee scale whereby the longer the property remains vacant, the greater the fee. Fees range from \$500 in the first year up to \$5,000 if the property has remained vacant for 10 years, with an additional \$500 for each year after 10 years.²⁴

VPR in North Carolina

Local governments in North Carolina have been granted sufficient authority under the general police power²⁵ and minimum housing statutes²⁶ to implement a VPR program. They must follow the Classic Vacant Property model, as it is currently not possible to force a lender to act on an elective mortgage clause under North Carolina law, as is required by the Home Foreclosure model. Until the 1970s, North Carolina abided by a strict interpretation of statute known as Dillon’s Rule whereby local governments could only exercise powers that have been specifically granted by the legislature. This is in stark contrast to the broad interpretation used in California (where the “Chula Vista Model” originated) where local governments can exercise any powers that have not been

²¹ Schilling, J. (2009). Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes, *Albany Government Law Review*, 2, 101-158.

²² US Conference of Mayors. (2008). Vacant and Abandoned Properties: Survey and Best Practices. Retrieved from: www.usmayors.com.

²³ Schilling, Code Enforcement, at 130.

²⁴ National Vacant Properties Campaign. (2009). Strategies & Technical Tools. Retrieved from: <http://www.vacantproperties.org/strategies/tools.html>.

²⁵ N.C.G.S. § 160A-174(a) and § 153A-121(a).

²⁶ N.C.G.S. § 160A-441 et. seq.

specifically limited by the legislature.²⁷ Despite the early 1970's legislative call for broad interpretation in North Carolina, courts have continued to apply Dillon's rule intermittently.²⁸ Therefore, for a local government ordinance to require a lender to act on an elective mortgage clause, there would first need to be an act of the General Assembly that requires all mortgages to contain an abandonment clause that requires the inspection of properties in default and that mandates the exercise of the abandonment clause upon discovery of an abandoned property.

The interplay between the general police power and minimum housing standards is confusing, and the two authorities often overlap.²⁹ Relying solely on the general police power, local governments in North Carolina can regulate aesthetic conditions of vacant properties, such as broken windows and light fixtures. Conditions contributing to fitness for human habitation³⁰, such as structural defects, are regulated under minimum housing statutes. A vacant property registration program would be expected to withstand judicial scrutiny as a reasonable exercise of a local government's general police power authority as long as it does not attempt to regulate those qualities that make a property fit for human habitation. Even properties that are unfit for human habitation can be required to be registered under the general police power. Such registration will not be preempted by minimum housing standards because the registration is not for the purpose of rendering the property fit for human habitation, but for notifying the local government of the vacancy.

Requiring an owner to maintain vacant properties in good repair may implicate both structural and aesthetic components. Because the authority granted by the two sources differs in many respects, VPR ordinances must be carefully constructed to harmonize the two authorities, with close attention paid to differences between actions taken pursuant to the general police power and those taken pursuant to minimum housing statutes. If a local government would prefer to stay within the general police power so as to avoid being subject to minimum housing procedures, the VPR ordinance must be drafted to regulate only aesthetic conditions. If a local government would also like to regulate conditions that render a building unfit for human habitation, the ordinance must be

²⁷ For an evaluation of North Carolina local government authority as compared to home rule states, see Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?*, 84 N.C. L. Rev. 1983 (2006).

²⁸ Bluestein, Frayda S. (2006). *Do North Carolina Local Governments Need Home Rule?*, North Carolina Law Review, 84(1983).

²⁹ Tyler Mulligan, a professor at the UNC School of Government, thoroughly examined this overlap in his 2009 law review article *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, cited in footnote 12.

³⁰ Under North Carolina's minimum housing statutes, dwellings are defined as "unfit for human habitation" when they suffer from "defective conditions" such as "defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness" which render them "dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the city." N.C.G.S. § 160A-444.

drafted to utilize the procedures set forth in the minimum housing statutes for portions of the regulation that govern that aspect of the property.

If a local government mistakenly applies the general police power in an area that should be covered by the minimum housing statutes, the ordinance could be voided as applied. Because this is new legal territory in North Carolina, there is also the risk of a legal challenge to the ordinance by an affected property owner. These consequences could dissuade local governments from enacting a vacant property registration program.

The Town of Yanceyville provides an example of a local government that is not interested in pursuing a VPR program due to the newness of the approach in North Carolina. On January 5, 2010, I spoke to the Yanceyville Town Council about how a Vacant Property Registration program might benefit their town. Yanceyville has several buildings within its borders that are dilapidated or burned out. Most, if not all, of the buildings that are of the greatest concern to the town need to be demolished or structurally renovated, which the town cannot presently afford. Demolition and structural renovation are beyond the reaches of the general police power, though a VPR ordinance would help to prevent buildings that have been more recently vacated from reaching such a state of disrepair. However, because a VPR ordinance would not resolve the immediate vacant property needs of the municipality and because of the increased likelihood of legal challenges to novel ordinances, the Town decided that they will not pursue a VPR ordinance at this time. They did indicate an interest in monitoring the success of Warrenton's recently adopted ordinance, and a willingness to consider the approach in the future.

CHAPTER TWO: METHODS

Review of Literature

I began my research into vacant property registration programs with a review of literature on the subject matter, a listing of which is found in Appendix A. I chose the literature in my review according to three themes: those explaining the causes and impact of vacant and abandoned properties on communities, those explaining vacant properties registration ordinances generally, and case studies of communities that have implemented vacant property registration programs.

Regarding the first theme, I chose scholarly and practitioner-based literature on vacancies and foreclosures in order to assess state-of-the-art issues, thinking, and concepts regarding this subject matter and to gain a thorough understanding of the issue.

Regarding the second theme, I chose law review articles to cement my understanding of the policy issues surrounding vacant property registration programs, and guidance documents for governments issued by non-government agencies such as the Brookings Institute, the National Governor's Association and the US Conference of Mayors.

Regarding the third theme, I chose case studies that would give me an understanding of the different ways in which vacant property registration ordinances can be structured to meet the unique needs of a particular municipality.

Guidance Document

Upon completion of my review of literature, I assembled a list of existing vacant property ordinances and initiatives for analysis using the Safeguard Properties database of vacant property registration ordinances³¹ and the National Vacant Properties Campaign's Vacant and Abandoned Property Registration Database³². There are over 300 proposed or enacted vacant property ordinances throughout the nation, the bulk of which are in California, Florida, and Illinois. For the purposes of this project, I limited my analysis to nineteen ordinances, a listing of which is found in Appendix B. Ordinances were chosen based on geographic proximity to North Carolina. In addition, ordinances that are frequently cited in my review of literature were included, such as those of Chula Vista, CA and Wilmington, DE.

I evaluated the chosen ordinances based on a qualitative content analysis, paying special attention to how the ordinance organized and what verbiage is used. I used this information to create a "skeleton" for my guidance document. I then worked to fill in the "skeleton" by describing each section of a typical VPR ordinance, providing sample language, and detailing special considerations for North Carolina municipalities based on my understanding of North Carolina law.

³¹ <http://www.safeguardproperties.com/vpr/city.php>

³² http://www.vacantproperties.org/strategies/documents/VPRO_web.pdf

Case Studies

I became aware of Warrenton's desire to implement a vacant property registration program through an externship with Professor Tyler Mulligan at the University of North Carolina School of Government in the fall of 2009. Professor Mulligan had been working in conjunction with two Duke Law students and Warrenton's town attorney to develop a VPR ordinance for the Town of Warrenton and he invited me to review the draft ordinance. Warrenton's greatest need was to prevent further aesthetic deterioration of buildings in their downtown and highway business districts, and the ordinance was crafted to that end. Warrenton's Board of Commissioners formally adopted the ordinance on December 14, 2009 and it became effective on February 1, 2010. Chapter Three of this document, a case study of Warrenton's approach to vacant properties, is based on my work with Tyler Mulligan in the fall of 2009 as well as email and phone correspondence with Warrenton's Town Administrator, John Freeman.

The National Vacant Properties Campaign's Vacant and Abandoned Property Registration Database incorrectly listed Hickory as having a vacant property registration program. My efforts to locate information about Hickory's VPR program revealed instead that Hickory considered adopting a VPR ordinance and decided instead on a multi-faced approach to vacant and abandoned properties that they call "Operation No Vacancy." I feel that this program provides a good example of the ways that local governments have approached the problem of vacant properties in North Carolina in the absence of VPR programs. Assuming Warrenton's experience is successful, I foresee other municipalities in North Carolina adopting VPR ordinances as a part of a comprehensive approach to vacant properties. In Chapter Four of this document, a case study of Hickory's approach to vacant properties, I examine whether their approach could be made stronger by the adoption of a supplementary VPR program. Chapter Four is based on qualitative research into Hickory's attempt to get a handle on soaring foreclosure rates as well as correspondence with Hickory Planner Dave Leonetti.

The final step of this project was to revisit my guidance document and adjust it to reflect what I learned through my investigations of Hickory and Warrenton. This required very little adjustment, and was limited to clarifying the potential stumbling blocks presented by the overlap of authority. The resulting document, which can guide local governments wishing to implement a vacant property registration program, is Chapter Five of this project.

CHAPTER THREE: WARRENTON CASE STUDY

Warrenton's Struggle with Vacant Properties

The Warrenton Town Council voted unanimously to adopt a vacant commercial property registration program on December 14, 2009. The ordinance went into effect on January 1, 2010. Warrenton is a very small town with a population of 740 that has experienced negative population and job growth in recent years. Warrenton has an unemployment rate of 15.2%³³, and has suffered economically due to plant closings in the past two decades. This is in sharp contrast to historical Warrenton, which was the wealthiest town in North Carolina in the 1800s and early 1900s.³⁴ Because of this, the historic district in Warrenton contains beautiful historic buildings that are a potential tourist draw. Unfortunately, many of these homes have fallen into disrepair due to the current economic climate, and the Town does not have the funds to maintain or rehabilitate them. The picture below is of an historic building in Warrenton, NC that is in a state of disrepair.



Also of concern to Warrenton is its downtown district, which was once bustling. As is fairly typical of small rural towns, Warrenton is in danger of losing its downtown business districts to vacancy as strip malls spring up in other areas of town. There are some downtown businesses in Warrenton that are reasonably successful and others that are struggling, but the number of vacant storefronts has been steadily growing. There are currently about a dozen vacant storefronts in Warrenton's downtown district. Some of these properties have owners who do not live in Warrenton, and who feel no motivation or obligation to improve them. The picture below shows downtown Warrenton in 1938.

³³ North Carolina Department of Commerce. (2010). Warren County Profile.

³⁴ Warrenton History (2010). Retrieved from <http://www.warrenton-nc.com/history.shtml>.



The Passage of a Vacant Property Registration Ordinance

The possibility of a Vacant Property Registration program was first presented to Warrenton's Board of Commissioners in February 2009 by UNC School of Government Professor Tyler Mulligan as part of a broader presentation about managing vacant and derelict buildings. Commissioner John Mooring, the chairman of the Planning, Zoning and Code Enforcement Department in Warrenton, was instrumental in the ordinance's passage. With the help of a small group of dedicated citizens, Mooring created an inventory of vacant commercial properties with a rating system of state of repair and occupancy that was used to press the Board of Commissioners for action.³⁵

A vacant property registration program is a good fit for Warrenton because they only want to regulate their commercial district at this time. One of the attractive qualities of VPR programs is that they can be molded to fit the specific needs of the community, and so the ordinance was drafted to only be applicable to the downtown commercial district. On the same day that the VPR ordinance was adopted, the Warrenton historic district was expanded to include the downtown commercial district. This ensures that the properties most in need of regulation are covered by the ordinance.

Because Warrenton's main concerns are aesthetic, the town was able to construct the ordinance using only the general police power authority without implicating minimum housing standards. Minimum housing standards require a degree of administration and cost that Warrenton is not prepared to commit, and could result in the demolition of

³⁵ Freeman, John. Telephone Interview. 31 March 2010.

buildings that they would rather see renovated. There is a strong belief amongst the Board of Commissioners that aesthetic improvements will make a big difference to the atmosphere downtown and that it will encourage owners of vacant properties in neighboring districts to renovate their own properties.³⁶

Overview of the Ordinance

Warrenton's VPR ordinance, which is found in Appendix C, requires owners of vacant commercial property in the downtown commercial district (the C1 and C2 business districts) to register their property either voluntarily or within 30 days of receiving a registration notice from the town. An annual fee of \$15 per registered property will be charged starting July 1. The fee will be waived for properties registered before July 1, in an effort to encourage compliance and to reduce administrative costs of locating property owners.

The ordinance requires that properties be maintained so as to exhibit "no evidence of vacancy," and provides a list of maintenance and security guidelines to clarify this standard. The list includes requirements that the exterior paint be in good condition, that windows be intact, and that interior areas visible from the exterior be kept so as to exhibit no evidence of vacancy. The ordinance also requires that property owners who live outside the area hire a local property management company to meet the maintenance and security guidelines. Penalties for failure to comply with provisions of the ordinance range from \$50 to \$500. [?]

The ordinance requires that owners of properties included in the historic district must apply for a Certificate of Appropriateness from the Historic District Commission before performing certain work to their property's exterior, including the type and style of windows, doors, lighting and signs. The ordinance provides a year delay on Certificates of Appropriateness for planned demolitions of historic properties to provide the Historic District Commission time to negotiate with the owner or other parties to find a way to preserve the property.

Preliminary Findings

The development of the Vacant Property Registry has been successful thus far. This success is likely due to the registration fee waiver that is in effect until July 1. One early success story is already being touted, as the owner of several downtown properties has responded to the ordinance by renovating and repairing the facades of four of his buildings.³⁷ There has not been any complaint from local property owners, but Town Administrator John Freeman expects resistance from some out of town property

³⁶ Ibid.

³⁷ Ibid.

owners.³⁸ It is possible that their silence is due to the fact that they are not yet aware of the ordinance. It is hoped that the ordinance will motivate absentee property owners to improve and rent or sell their buildings as it has local property owners. If a property owner were to challenge the validity or constitutionality of Warrenton's VPR ordinance, Freeman says the town is confident that it would withstand judicial scrutiny.

³⁸ Ibid

CHAPTER FOUR: HICKORY CASE STUDY

Hickory's Struggle with Vacant Properties

At 14.2%, Hickory's unemployment rate is higher than the state and national average.³⁹ Consistent with national trends, this soaring unemployment rate has contributed to a high vacancy rate of commercial properties and a large number of foreclosures. Between 1999 and 2005, foreclosures in the Hickory area increased by 252 percent, representing the largest increase of any metro area in North Carolina.⁴⁰ About 15% of total commercial and industrial square footage in Hickory is vacant, and in some neighborhoods it is as high as 30%.⁴¹

Until 2007, vacant properties were monitored by Hickory's Fire Prevention Bureau, which enforces the city's fire code. The Fire Prevention Bureau tracked vacant buildings based on a use permit system, whereby any building that did not have a valid use permit was assumed to be vacant. The Hickory Police and Fire Departments closely monitor vacant buildings, and in 2007 these departments asked the city if there was a better way to track vacant properties, and if there was a way to reduce the number of vacant commercial and industrial buildings that they monitor. Hickory's Planning and Development Department responded by creating an inventory of vacant and underutilized buildings in the city of Hickory and its extra-territorial jurisdictions. Unlike the Fire Prevention Bureau's inventory, the Planning Department's inventory includes buildings with valid use permits that are nonetheless underutilized, such as those used for storage rather than for their intended purpose. The inventory, which is available on the town's website as a downloadable file and also as a planning layer on the City of Hickory's GIS site⁴², contains photos and property information for each vacant building, and also includes real estate contact information where available. The map resulting from the vacant building inventory clarified which areas of Hickory have the largest concentration of vacant buildings, and planning staff began to see the inventory's potential as a marketing tool for the redevelopment of vacant properties.

Operation No Vacancy

Hickory Planner Dave Leonetti compiled a map of vacant properties and a memo describing the department's findings for the Hickory City Council. Councilwoman Sally Fox used Leonetti's findings to put together an eight-point plan to encourage businesses to purchase, rehabilitate and repurpose vacant buildings through grant funding. She presented her plan at the city council's annual retreat in February, 2008.⁴³ The plan was well received, and Hickory's planning staff developed Fox's ideas into a fully formed and

³⁹ Bureau of Labor Statistics (2009). Retrieved from: <http://www.bls.gov/web/laumstrk.htm>

⁴⁰ Hopkins, S. (2006, April 09). Area foreclosures jump: Seizures up 252% in Hickory region 1999-2005, the biggest jump in N.C. metro areas. *The Charlotte Observer*. A1.

⁴¹ Leonetti, Dave. Telephone Interview. 29 March 2010.

⁴² <http://www.hickorygov.com/egov/docs/1223668303253.htm>

⁴³ Gould, R. (2009, Jun 23). Hickory's revitalization program wins national award. *Hickory Daily Record*. A1.

funded multi-faceted project that became known as “Operation No Vacancy.” Hickory’s Planning and Development Department took many factors into consideration when crafting Operation No Vacancy. They chose to target vacant commercial and industrial properties rather than residential properties for several reasons. Bobby Baker, the head of Code Enforcement, estimates that 20% of residential total code enforcement investigations are in foreclosed homes.⁴⁴ Hickory is handling the Code Enforcement repercussions of its soaring residential foreclosure rate well, and the most immediate need for intervention is in commercial and industrial areas. As was mentioned prior, Hickory’s Police and Fire Departments requested help with monitoring commercial and industrial buildings. In addition, Hickory has had problems with graffiti in their commercial and industrial districts, a problem that is exacerbated by vacancies.⁴⁵

A significant portion of vacancies are located along Hickory’s two railroad corridors, which are in older areas of town. Some of these buildings are listed in the National Register of Historic Places, and others are eligible but not listed. Many however, are old manufacturing and industrial buildings built in 1950s and 1960s that do not have architectural significance or any other means of qualifying for the Register, and that are not useful for modern manufacturing. The areas of town along the railroad corridors also do not have a high enough traffic count to support retail, as many of the roads have been turned into one-way streets. In other words, many of the vacant buildings that are clustered in older areas of Hickory are functionally obsolete, such as the building pictured below. With these points in mind, city staff identified six goals for Operation No Vacancy:

1. Provide economic inducements that will attract reinvestment in distressed commercial and industrial corridors;
2. Encourage new and existing businesses to locate in vacant and under-utilized buildings;
3. Beautify, upgrade, and market, vacant properties in the Commercial Revitalization Area;
4. Stimulate and encourage good design in the rehabilitation of vacant properties;
5. Preserve the unique character of historic properties; and
6. Encourage the formation of public/private partnerships for revitalization efforts.⁴⁶

⁴⁴ Leonetti, Dave. Telephone Interview. 29 March 2010.

⁴⁵ Hickory is currently considering the implementation of a graffiti ordinance that would treat graffiti as a nuisance and would hold property owners responsible for its removal.

⁴⁶ City of Hickory, Vacant Building Revitalization Guidelines, retrieved from: http://www.hickorygov.com/egov/docs/1259704356_212249.pdf



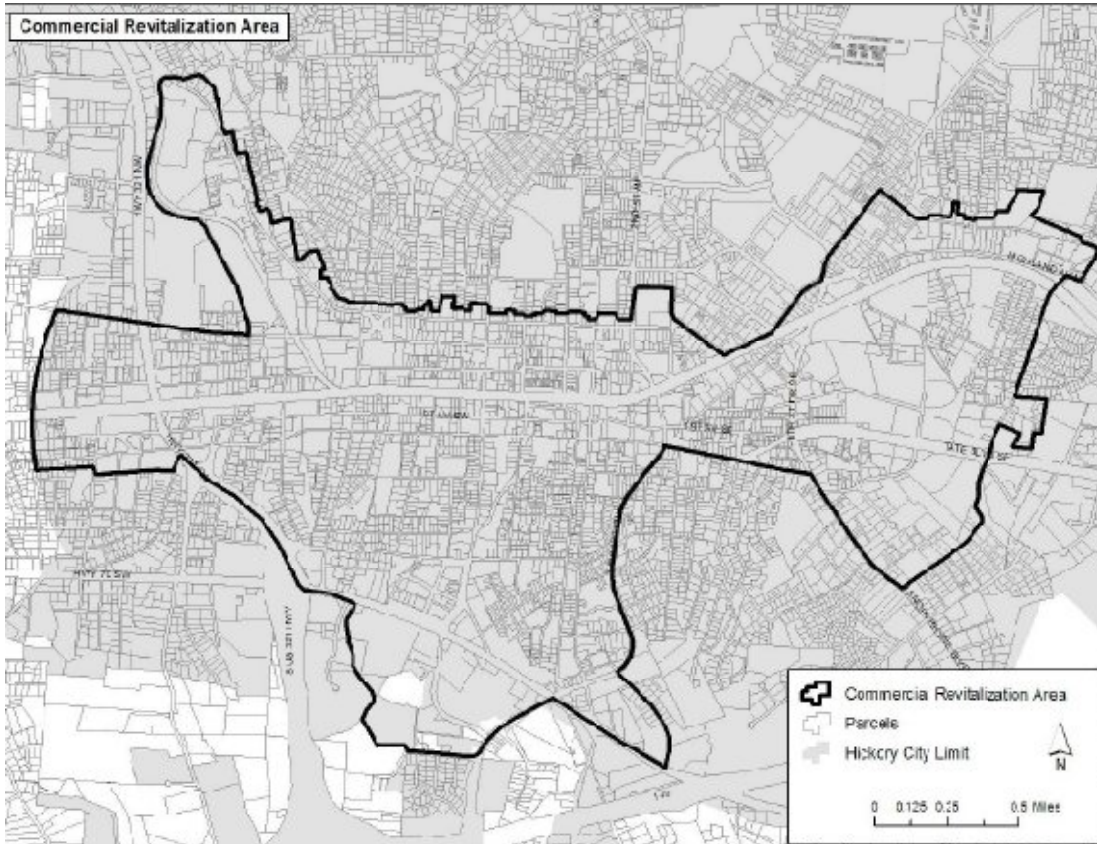
The component of Operation No Vacancy that has received the most attention is the Vacant Building Redevelopment Grant, a matching grant program that provides funding for 50% of eligible project costs up to \$25,000. As of April 1, 2010, nine Vacant Building Development Grants had been approved, four of which had been completed. The City Council set aside \$250,000 to fund this program at its inception, and they pass a budget amendment for funding each time a grant is approved.⁴⁷ Vacant Building Redevelopment grants are limited to Hickory's Commercial Revitalization Area. The Hickory City Council formed a Redevelopment Committee in the spring of 2008, which designated a Commercial Revitalization Area based on the findings of the vacant building inventory. A map of the Commercial Revitalization Area is shown below. The Redevelopment Committee is comprised of representatives from the city manager's office and the planning, fire, community, economic development, public services, and Catawba County building services departments.⁴⁸ The city is open to modifying the Commercial Revitalization Area, and is closely monitoring the success of the grant program to determine if adjustments are needed.

Operation No Vacancy also includes two other grant programs, the Community Appearance Grant and the Landscape Incentive Grant. The Community Appearance Grant offers matching grants of 50% of exterior improvement costs up to \$5,000. This grant is meant to cover such improvements as window replacements and painting. The Landscape Incentive Grant offers matching grants of 50% of landscaping costs up to \$2,500. Each of these grants is also limited to the Commercial Revitalization Area. Both of these programs are funded yearly as part of the Community Appearance Commission

⁴⁷ Leonetti, Dave. Telephone Interview. 29 March 2010.

⁴⁸ Gould, R. (2009, May 16). City chips in \$45,000 for renovations of vacant buildings. Hickory Daily Record. A3.

budget. Town Staff, with the help of Catawba County building inspectors, conducted classes for contractors, designers and engineers regarding the North Carolina Rehabilitation Code to facilitate the redevelopment of existing buildings.



In May, 2009 Hickory received the Alliance for Innovation's "Outstanding Achievement in Local Government Innovation" award for its Operation No Vacancy program.⁴⁹ In this respect, the program has been successful. From a practical perspective, however, not much has changed. Although there have been individual cases of redevelopment, the total number of vacant properties in Hickory has not decreased. Some of the redevelopment grants have gone to businesses that took advantage of the opportunity to expand to a larger building, leaving their old building vacant. In addition, the economy has been depressed since the program's inception. Unemployment in Hickory has gone from 6-14% since Operation No Vacancy's inception.

⁴⁹ Gould, R. Program wins national award at A1.

Vacant Property Registration Ordinance v. Operation No Vacancy

As part of their approach, the Hickory City Council considered implementing a Vacant Property Registration program, but they have set the idea aside for now. Like Yanceyville, Hickory plans to monitor the success of Warrenton's VPR program, and will revisit the possibility of implementing a VPR ordinance at a future date.

Operation No Vacancy is currently limited to a limited geographic area within Hickory's borders, and to commercial and industrial buildings. A VPR program targeted at residential properties throughout the city might be a nice supplement to the current approach. One major benefit of a VPR program is that it creates a database of vacant properties. Hickory has already developed an impressive inventory of vacant buildings, and so this is not a compelling argument for the adoption of a VPR program in Hickory. A more persuasive argument for implementing a VPR program in Hickory is that the associated registration fees and penalties would provide the financial resources to step up code enforcement monitoring to relieve the pressure on a burdened Police Department. As Code Enforcement Officer Bobby Baker indicated, one fifth of code enforcement cases in Hickory are related to foreclosures.

Politically a VPR ordinance might be tough to sell. No one wants to place an extra burden, no matter how small, on the owner of a foreclosed home. Also, Hickory's current approach to vacant properties is entirely voluntary and incentive based. It may not be politically feasible to pass an ordinance requiring the maintenance of vacant properties when one was so recently passed incentivizing the maintenance of vacant properties. This is particularly true because Hickory's population views Operation No Vacancy as a success, a viewpoint that was encouraged when the Alliance for Innovation awarded the program an award.

Like any land use ordinance, Vacant Property Registration programs are not one size fits all, and may not be appropriate for every community. Although a VPR ordinance would be a nice supplement to Hickory's Operation No Vacancy approach to vacant and abandoned properties, I feel that the City Council and the Planning Department are wise to bide their time and reconsider at a future date.

CHAPTER FIVE: GUIDANCE DOCUMENT FOR DRAFTING A VACANT PROPERTY REGISTRATION PROGRAM IN NORTH CAROLINA

As the preceding chapters have shown, Vacant Property Registration programs are one tool that local governments can use as part of a comprehensive approach to managing vacant and abandoned buildings. Hickory's Operation No Vacancy program illustrates that other approaches can also work. Warrenton's success in passing a VPR ordinance, however, proves for the first time that this approach is possible in North Carolina. If Warrenton sees improvement in their downtown commercial district as a result of the ordinance, other towns will likely implement their own VPR programs. This chapter is meant to serve as a guidance document for those governments, and takes a step-by-step approach to drafting an ordinance that will serve the unique needs of their community and that will withstand judicial scrutiny if challenged.

I. OVERVIEW OF VACANT PROPERTY REGISTRATION PROGRAMS

In response to the negative impact of vacant and foreclosed homes on a community, local governments throughout the United States have begun to enact Vacant Property Registration ordinances ("VPR ordinances"). VPR ordinances typically require owners of properties that have been vacant or abandoned for a certain length of time to register formally with the local government. Registration provides the local government with a point of contact for regulation and holds the owner to certain safety and maintenance standards.

A. Special Considerations in North Carolina

Although there are over 300 Vacant Property Registration programs throughout the United States, Warrenton became the first North Carolina municipality to adopt such a program on December 14, 2009. Other municipalities are likely to follow. North Carolina's delay in enacting VPR ordinances in comparison to the rest of the country is possibly due to the fact that the relevant statutes overlap and sometimes contradict each other, which creates a confusing environment for constructing coherent policy.

The authority to regulate vacant properties in North Carolina comes from two sources: (1) the general police power⁵⁰ and (2) minimum housing standards⁵¹. Relying solely on the general police power, local governments in North Carolina can regulate aesthetic conditions of vacant properties, such as broken windows and light fixtures. Conditions contributing to fitness for human habitation,⁵² such as structural defects, are regulated

⁵⁰ N.C.G.S. § 160A-174(a) and § 153A-121(a) ("A [city or county] may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.")

⁵¹ N.C.G.S. § 160A-441 et. seq.

⁵² Under North Carolina's minimum housing statutes, dwellings are defined as "unfit for human habitation" when they suffer from "defective conditions" such as "defects therein increasing the hazards of fire,

under minimum housing statutes. Requiring an owner to maintain vacant properties in good repair may implicate both structural and aesthetic components. Because the authority granted by the two sources differs in many respects, care must be taken in drafting a VPR ordinance in North Carolina.

If a local government would prefer to stay within the general police power so as to avoid being subject to minimum housing procedures, the VPR ordinance must be drafted to regulate only aesthetic conditions. If a local government would also like to regulate conditions that render a building “unfit for human habitation,” the ordinance must be drafted to utilize the procedures set forth in the minimum housing statutes for portions of the regulation that govern that aspect of the property.

B. Components of a Vacant Property Registration Program

Vacant property registration ordinances typically contain the following requirements, each of which will be discussed in more detail in the following sections:

- Registration of vacant properties with a local government official and periodic renewal of registration;
- Payment of a fee at the time of registration and renewal of registration;
- Designation of a local agent or property management company for non-local property owners;
- Periodic inspection of the property by local officials;
- Submission of an action plan for maintenance of the property and/or compliance with enumerated maintenance standards; and
- Payment of fines for non-compliance.

C. Ordinances Surveyed

For the purposes of this paper, 19 ordinances were selected for review, a listing of which is found in Appendix A. Ordinances were chosen based on geographic proximity to North Carolina. In addition, ordinances that are frequently cited in literature regarding VPR ordinances were included.

II. PREAMBLE

The preamble explains the function of the ordinance by identifying why it is necessary (the “findings”) and what goals it will achieve (the “purpose”). The preamble of a VPR ordinance serves two specific legal functions. First, it helps deter claims that the ordinance violates the Due Process clause of the United States Constitution by giving some weight to the argument that the benefit to the community outweighs the burden to

accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness” which render them “dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the city.” N.C.G.S. § 160A-444.

the property owner.⁵³ Second, it provides a strong argument for differentiating between vacant and occupied buildings⁵⁴ to help deter claims that the ordinance violates the Equal Protection clause. The preamble also may describe the legislative authority to enact the ordinance.

Ordinance preambles are either written in paragraph form or as a series of “Whereas” clauses, each giving a fact or argument for the ordinance. The findings and the purpose can be combined or separated into two distinct sections.

A. Special Considerations in North Carolina⁵⁵

In determining the constitutional limits of general police power regulation of private property, courts look to whether the public benefit gained from the ordinance outweighs the private burden imposed. North Carolina case law provides an inventory of corollary community benefits that strengthen an argument that the public interest outweighs the burden to the property owner.⁵⁶ If possible, include these corollary benefits in the preamble to a Vacant Property Registration ordinance in North Carolina:⁵⁷

- Protection of property values;
- Promotion of tourism;
- Protection of health and safety;
- Preservation of the character and integrity of the community; and
- Promotion of the comfort, happiness and emotional stability of area residents.

B. Examples

One approach to the preamble is to provide a list of ways in which vacant structures detract from the health, safety and welfare of the community. This strengthens the argument that regulating vacant structures is beneficial to the community and justifies the burden placed on the property owner. Riverdale, Georgia and Wheeling, West Virginia both employ this approach in the preamble to their VPR ordinances:

⁵³ An explanation of Due Process requirements of land use regulation is beyond the scope of this document. For a concise and thorough explanation of Due Process and Equal Protection as related to North Carolina Land Use Ordinances, see, David W. Owens, *Land Use Law in North Carolina*, 217-225 (2006).

⁵⁴ Because the classification of a building as “vacant” or “occupied” does not implicate a suspect class or abridge a fundamental right, the local government only needs to show that the ordinance bears a rational relationship to a legitimate government purpose. The courts will give legislative deference to the town if it makes a strong argument for the classification.

⁵⁵ This section contains only a cursory look into the possible constitutional implications of a vacant property registration program in North Carolina. For more information, see Owens, D. (2006) *Land Use Law in North Carolina*, University of North Carolina School of Government.

⁵⁶ For a detailed account of the string of case law from which this inventory of corollary community benefits was garnered, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 *Campbell L. Rev.* 1 (2009).

⁵⁷ *State v. Jones*, 305 N.C. 520, 530 (1982).

Vacant structures are vulnerable to break-ins, criminal activity, destruction, fire, accidents, looting and other unsafe activities that are injurious to the health, safety and welfare of the citizens of the City. In addition, they can attract and/or cause blight and other harmful effects to surrounding properties. For all of these reasons, it is essential to public health, safety and welfare that the city maintain an accurate registration of all vacant structures.

RIVERDALE, GA., CODE OF ORDINANCES § 18-123

The city has determined that an uninspected and unmonitored vacant building may present a fire hazard, may provide temporary occupancy by transients (including drug users and traffickers), may detract from private and/or public efforts to rehabilitate or maintain surrounding buildings, and that the health, safety and welfare of the public is served by the regulation of such vacant buildings.

WHEELING, W.VA., CODIFIED ORDINANCES OF WHEELING, § 1718.02

Some VPR ordinances reference broad national trends in justifying their ordinance, such as that of Prince George's County, Maryland:

WHEREAS, recent events in the national housing market have led to a drastic rise in the number of foreclosed houses in Prince George's County and such houses are in the control of financial institutions that have little connection to the communities where the homes are located; and WHEREAS, many of these homes are vacated at the demand or request of the financial institution, at times prior to the conclusion of foreclosure proceedings, and sit empty for months or years creating a blight on the neighborhood, becoming an attractive nuisance within the neighborhood, and constituting a violation of the County's Housing Code; and WHEREAS, it is extremely difficult for County officials responsible for enforcing the Housing Code to communicate with the appropriate representatives of financial institutions to obtain compliance with the requirements of the Housing Code and other property maintenance codes when the identities of the appropriate financial institutions and their authorized representatives in the County are obscured by layers of unrecorded conveyances and layers of financial institution organizations in multiple locations; and WHEREAS, county and municipal jurisdictions around the nation are encountering patterns of indifference and neglect from financial institutions regarding the maintenance of foreclosed properties resulting in deteriorating properties, accumulations of litter and debris, unsecured buildings, unsecured swimming pools and other maintenance violations that attract vandalism, squatters, and criminal activities.

PRINCE GEORGE'S COUNTY, MD., THE PRINCE GEORGE'S COUNTY CODE, § 13-1101

Others, such as the ordinance proposed in Atlanta, Georgia, reference a specific incident that is the impetus behind the development of a VPR ordinance:

WHEREAS vacant and abandoned buildings increase the danger of fire within such buildings and recently cause the death of firefighter Steven Soloman;

ATLANTA, GA., PROPOSED ORDINANCE TO REQUIRE A REGISTRATION PROCESS FOR VACANT PROPERTY

The VPR ordinances of Chula Vista, California and Salisbury, Maryland explain the purpose of the ordinance in the preamble, clarifying what can be achieved by monitoring vacant properties rather than detailing the harms they present:

It is the purpose and intent of the Chula Vista City Council through the adoption of this Chapter to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

CHULA VISTA, CAL., CHULA VISTA MUNICIPAL CODE § 15.60

The purpose of this chapter is to protect the public health and safety and the general welfare of the citizens of the City of Salisbury and to assist the City government in monitoring the number of vacant dwellings in the City to assess the effects of the condition of those dwellings on nearby businesses and the neighborhoods in which they are located.

SALISBURY, MD., SALISBURY MUNICIPAL CODE § 15.25.020

III. REGISTRATION REQUIREMENTS

Registration serves two functions. It establishes local government awareness of vacancies for inspection and monitoring purposes and it provides the information necessary for the creation of a database that can be used for enforcement purposes.⁵⁸

Vacant Property Registration ordinances typically contain information regarding the following, each of which will be explored in more detail in the following sections:

- Criteria for determining to which properties the ordinance applies;
- Information required for registration;
- Inspection of property pursuant to registration; and
- Registration renewal.

Some VPR ordinances issue a license or certificate to the owners of registered vacant properties. In these ordinances, the term “licensing” or “certification” is sometimes substituted for the term “registration.”⁵⁹

⁵⁸ Joseph Schilling, Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes, 2 Alb. Gov’t L. Rev. 101, 131 (2009).

⁵⁹ See, e.g. Albuquerque, N.Mex., Code of Ordinances § 14-3-4-4 (2009), wherein an unlicensed vacant property is considered a nuisance.

A. Criteria for Determining to Which Properties the Ordinance Applies

This component of the ordinance specifies which properties must register, and typically includes the following, examples of which will be given below:

- The conditions that determine vacancy;
- The time of registration;
- The category of property to which the ordinance applies; and
- The method by which registration is initiated.

i. Conditions that Determine Vacancy

Identifying what type of property a VPR ordinance regulates involves defining the term “vacant.”⁶⁰ In defining vacancy, the following factors might be considered:

- Whether a building is occupied;
- The manner in which the building is occupied;
- Whether the person occupying the building has a legal right to be there; and
- Exceptions, including properties undergoing renovation, temporary emergency situations, and seasonal residences.

EXAMPLES:

Washington, D.C. considers whether a building is continuously occupied in determining vacancy:

“Vacant building” means real property improved by a building, or a part of a building, which contains a dwelling or commercial unit, or a part of a building which is a dwelling or commercial unit, which, on or after April 27, 2001, has not been occupied continuously.

WASHINGTON D.C., OFFICIAL CODE § 42-3131.05

Fredericksburg, Virginia considers the manner in which the building is occupied to determine vacancy:

A building is “vacant” if it is not occupied in a manner consistent with the purpose for which it was built or typically occupied. For example, a single family residence used for storage is “vacant”.

FREDERICKSBURG, VA., CODE OF ORDINANCES § 18-4

Portsmouth, Virginia takes into account whether the person occupying the property has a legal right to be there in determining vacancy:

⁶⁰ Some of the Vacant Property Registration ordinances surveyed use the term “unoccupied” or “abandoned” rather than the term “vacant.”

Vacant or unoccupied building means any building or structure which is not occupied, used or inhabited on a regular and continuing basis by some person with a valid claim of right to possession or a fee simple title. The intrusion of trespassers or squatters into such buildings on any basis shall not render such building occupied or nonvacant within the meaning of this article.

PORTSMOUTH, VA., CODE OF ORDINANCES § 17-131

Winchester, Virginia and Riverdale, Georgia specify exceptions under which a property will not be considered “vacant” even in the absence of an occupant:

... does not include buildings which are undergoing construction, renovation, or rehabilitation and which are in compliance with all applicable ordinances, codes, and regulations, and for which construction, renovation or rehabilitation is proceeding diligently to completion.

WINCHESTER, VA., CODE OF ORDINANCES § 6-9

(1) Temporary emergency situations, not to exceed 60 days in length, including but not limited to damage caused by vandalism, theft or weather or hurricane preparation; or (2) Seasonal residences in which the owner lives at least six months out of the year in the residence.

RIVERDALE, GA., CODE OF ORDINANCES § 18-123

ii. Time of Registration

VPR ordinances require properties to register with the local government when they meet some threshold as set forth in the ordinance. This is typically determined either by length of time the property has been vacant or by some procedural threshold such as entering foreclosure.

If determined by length of time, the ordinance requires registration a certain number of days prior to or subsequent to vacancy. For ordinances that govern a wide range of property types or for those located in areas with a large number of vacation properties, this might be as long as six months or a year.⁶¹ A longer threshold protects owners of seasonal and vacation properties from falling under the regulatory reach of the ordinance.

If determined by a procedural mechanism such as foreclosure, the ordinance requires registration of properties that are going through or have completed the procedure.

⁶¹ Schilling, Code Enforcement, *Supra*, at 131. (“The classic [vacant property] ordinance seems to set six months as the minimum threshold; this period of time is critical to separate properties that are in seasonal use.”)

EXAMPLES:

In the ordinances surveyed, the registration requirement was initiated at varying times, ranging from fifteen days prior to vacancy to a year after vacancy.

The Albuquerque, New Mexico VPR ordinance requires registration before the property is vacated:

An owner must secure a Vacant Building Maintenance License 15 days prior to vacating a property.⁶²

ALBUQUERQUE, N.MEX., CODE OF ORDINANCES § 14-2-5-14

Alexandria Virginia provides an example of an ordinance with a year long minimum threshold:

The owner of a building which has been continuously vacant for a period of 12 months or more must register the building with the director of code enforcement

ALEXANDRIA, VA., CODE OF ORDINANCES § 8-1-130

Some VPR ordinances, such as that of Albany, Georgia include the length of time that a property must be vacant before the ordinance applies in the definition of the term “vacant” rather than in a separate section:

Vacant Structure means a structure or building that is unoccupied for a period of ninety (90) days.

ALBANY, GA., CODE OF ORDINANCES § 16-13.2

Prince George’s County, Maryland and Chula Vista, California provide examples of VPR ordinances that require registration when the property is in or has completed the foreclosure process:

Within five calendar days after a person authorized to make the sale of a residential property has filed an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property located in the County, the person authorized to make the sale shall give notice of the filing to the Director. The notice shall identify the residential property subject to foreclosure by street address and, if known, by tax account number, and shall include the names and addresses, if known, of all owners of the residential property subject to the foreclosure action and the name, address, and telephone number of the person authorized to make the sale.

PRINCE GEORGE’S COUNTY, MD., THE PRINCE GEORGE’S COUNTY CODE, § 13-1102

⁶² See supra note 7 and accompanying text.

Any beneficiary trustee who holds a deed of trust on a property located within the City of Chula Vista shall perform an inspection of the property that is the security for the deed of trust upon default by the trustor prior to recording a Notice of Default with the San Diego County Recorders Office. If the property is found to be vacant or shows evidence of vacancy it is by this chapter deemed abandoned and the beneficiary trustee shall within ten 10 days of the inspection register the property with the Director of Planning and Building or his or her designee on forms provided by the City.

CHULA VISTA, CAL., CODE OF ORDINANCES § 15.60.040

iii. Category of Property to Which the Ordinance Applies

If the registration requirement applies only to a certain category of properties, such as properties located in an historic or other specified district, this information is typically included in the VPR ordinance. An example of this is seen in the VPR ordinance of Pulaski, Virginia:

Owner or owners of buildings that have been vacant for a continuous period of 12 months or more and are located in a conservation and rehabilitation district of the town shall register such buildings with the town on an annual basis.

PULASKI, VA., CODE OF ORDINANCES § 18-71

iv. Initiation of Registration

VPR ordinances typically identify who is responsible for initiating registration once a property meets the threshold required for registration. Of the VPR ordinances surveyed, registration was initiated in one of two ways, though most of the ordinances surveyed employ a combination approach:

- The property owner is required to register the property on their own when the threshold for determining vacancy has been reached; or
- The property owner is required to register the property within a specified amount of time after receiving notice from the local government.

Note that the first option requires property owners to understand the requirements of the ordinance, whereas the second option places the burden of knowing when properties are vacant on the town. A combination approach might result in a higher percentage of vacant properties registering, as the property owner and the town share the burden of initiating registration.

EXAMPLES:

The VPR ordinance of Wheeling, West Virginia requires the owner to initiate registration:

For those structures that qualify as a vacant structure...the owner thereof shall be required to register the structure with the building inspection office within thirty days.

WHEELING, W.VA., CODIFIED ORDINANCES OF WHEELING, § 1718.06

Most of the ordinances surveyed require registration upon receipt of notice. This type of initiation often also specifies the length of time allowed for registration subsequent to receipt of notice. Of the ordinances surveyed this length of time ranges from 10 to 30 days. The VPR ordinance of Riverdale, Georgia provides an example of this type of initiation:

Whenever the city provides written notice to the owner of the existence of a vacant structure, the owner shall, within 10 calendar days of the date shown on such notice, submit the permit application and approved plan to the department, allow the city to conduct the initial inspection and pay all applicable fees.

RIVERDALE, GA., CODE OF ORDINANCES § 18-123

Mount Rainier, Maryland employs a combination approach where failure of the city to provide notification does not absolve the owner of the duty to register the property:

Upon determination by the City Manager that a building in the City is required to be registered pursuant to Section 3B-104.A above, the City Manager shall provide notice to the owner or agent of the requirement to register the building and submit a vacant building plan to the City Manager. The failure of the City Manager to provide this notice, or the failure of an owner to receive notice from the City Manager, shall not relieve the owner of the obligation to register such building as a vacant building and submit a vacant building plan.

MOUNT RAINIER, MD., CODE OF ORDINANCES § 3B-103

B. Information Required for Registration

Property owners typically fill out a form at the time of registration that requires some or all of the following information:

- The address of the vacant building;
- The legal description of the property (parcel or tax number, map block, etc.);
- The name and contact information of the owner;
- The name and contact information of the owner's local agent or representative;
- The name and contact information of the mortgagors;
- The name and contact information of any other responsible parties; and
- The date on which the building became vacant.

In providing this information, it is important that the registrant understands what is meant by the terms on the registration form. The designation of an agent and the definition of the term "owner" will be discussed in the following sections.

EXAMPLES

The information required for registration under the Mount Rainier, Maryland VPR ordinance includes all of the items listed above:

The registration statement shall contain the following information: 1. A description of the vacant lot by street address, property tax account identification number, and any other information required in order to accurately identify the vacant lot. 2. The name, address, and telephone number of the property owner of record, and in addition, if the owner is a corporation, limited liability company, limited liability partnership, or limited partnership, the name, address, and telephone number of the resident agent and, if the owner is a partnership or other entity not having a resident agent, the name, address, and telephone number of all partners, owners or officers of the owner or of an authorized agent of the owner. 3. The name, address, and telephone number of the owner's authorized agent if an agent has been designated by the owner; and 4. A post office box does not suffice as an address for the purposes of the registration statement.

MOUNT RAINIER, MD., CODE OF ORDINANCES § 3B-104

Some ordinances, such as that of Salisbury, Maryland leave room for additional requirements at the city's discretion:

The registration form shall include the street address of each such vacant dwelling, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the Department of Neighborhood Services and Code Compliance.

SALISBURY, MD., SALISBURY MUNICIPAL CODE § 15.25.020

i. Defining Owner

Identifying who must register a property under a VPR ordinance involves defining the term "owner." The VPR ordinances surveyed either define "owner" narrowly, as the title holder, or broadly, to include a larger pool of interested parties.

EXAMPLES:

Pulaski, Va. uses a narrow definition of "owner" in their VPR ordinance:

Owner means the person shown on the current real estate assessment books or current real estate assessment records, or the current fee simple title holder of the property if ownership has changed since tax assessment records were last updated.

PULASKI, VA., CODE OF ORDINANCES § 18-102

Portsmouth, Va. uses a much broader definition of the term "owner":

The term "owner," applied to a building or land, shall mean the holder of the title in fee simple or any person in whose name tax bills on the property are submitted. The term "owner" shall also mean any person who, alone or jointly or severally with others: (1) Shall have legal title to the property with or without accompanying actual possession thereof; or (2) Shall have charge, care or control of the property as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, mortgagee or vendee in possession, assignee of rents, lessee or any other person having control of the property or his duly authorized agent.

PORTSMOUTH, VA., CODE OF ORDINANCES § 1-2

ii. Designation of an Agent

Determining the party responsible for maintenance of vacant properties is one of the major challenges with enforcing vacant property registration programs.⁶³ The responsible party could be the owner, the property manager or another agent. One way that VPR ordinances attempt to address this problem is by requiring that a local agent be designated on the registration form. If the owner is located outside of the city or county, some ordinances require an owner to hire a local 24 hour maintenance company to service the property and provide the local government with their contact information at registration.⁶⁴

Requiring property owners who do not live in the area to hire a local maintenance company is a burdensome requirement. While no examples were found in the ordinances surveyed, an ordinance might include a waiver of the requirement for owners who reliably demonstrate an ability to maintain the property and who have not received any citations for maintenance violations in the previous quarter. Such a waiver might decrease the chance that a court would find that the burden to the property owner outweighs the benefit to the town and amounts to a violation of due process.⁶⁵

EXAMPLES:

The VPR ordinance of Baltimore, Maryland requires the designation of a local agent:

All registrations must include the name, local street address and telephone number of an authorized agent. The authorized agent must be a natural person 18 years of age or older who is customarily present in an office in Baltimore City for the purposes of transacting business or who actually resides in the city. He/She shall be designated by the owner for receiving violation notices and for receiving court process on behalf of the owner. An owner who fits these requirements may list himself as authorized agent.

BALTIMORE, MD., BALTIMORE CITY CODE § 4-6

⁶³ Schilling, Code Enforcement, *Supra*, at 131.

⁶⁴ Allan Mallach, *Bringing Buildings Back: From Abandoned Properties to Community Assets*, 149 (2006).

⁶⁵ For a more detailed analysis, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 *Campbell L. Rev.* 1 (2009).

C. Inspection of Property Pursuant to Registration

VPR ordinances often authorize town officials to inspect the property to confirm that the property is being maintained according to the requirements of the ordinance and to ensure that there are no fire, safety or health hazards present. Inspection is typically conducted at one or more of the following times:

- Upon registration of the property;
- Upon renewal of registration; or
- At any time the city deems an inspection necessary.

Inspections are typically performed by the Building Inspector, the Fire Chief and/or the Police Chief. Many of the ordinances surveyed use a portion of the fee paid at the time of registration to cover the cost of inspections.⁶⁶ Some VPR ordinances include a form granting permission for inspections as part of registration and registration renewal.

EXAMPLES:

The VPR ordinance of Richmond, Virginia requires inspection upon registration and annually thereafter:

As part of the registration process an annual inspection will be conducted. A complete inspection of the exterior of the building will be performed and an interior inspection may be performed at the inspector's discretion to insure that they are maintained in compliance with local codes and ordinances.

RICHMOND, VA., CODE OF THE CITY OF RICHMOND VA. § 14-15

In addition to an annual inspection, Riverdale, Georgia reserves the option to inspect the property at any time:

At the time the permit is initially issued, at the time of renewal registration and at any other time that the city deems necessary, the city may perform an inspection of the property and any vacant structures thereon.

RIVERDALE, GA., CODE OF ORDINANCES § 18-123

In Wheeling, West Virginia, inspections are performed only as necessary:

At the time of registration the Chief Building Inspector, the Fire Chief, City Engineer and Police Chief shall determine whether it is necessary for any or all of them to inspect the structure to identify any public safety issues needing to be addressed.

WHEELING, W.VA., CODIFIED ORDINANCES OF WHEELING, § 1718.04

⁶⁶ See infra note 78 and accompanying text.

D. Registration renewal

Of the ordinances surveyed, all required registration to be renewed according to one of the following schedules:

- Bi-annually;
- Annually on the anniversary of the original registration; or
- Annually according to a specific calendar date

EXAMPLES:

The VPR Ordinance of Albany, Georgia requires renewal of registration every six months:

The registration must be renewed at the end of each six months if the structure is still a vacant building.

ALBANY, GA., CODE OF ORDINANCES § 16-13.2

The VPR ordinance of Alexandria, Virginia requires annual registration according to the original registration date:

For each subsequent year, or any part of such year, that the building remains continuously vacant, an annual and non-refundable fee of \$25 shall be paid within 15 days of the anniversary date of the building's initial registration.

ALEXANDRIA, VA., CODE OF ORDINANCES § 8-1-130

Chula Vista, California requires renewal of registration on January 1st of each year:

Subsequent registrations and fees are due January 1st of each year and must be received no later than January 31 of the year due.

CHULA VISTA, CAL., CHULA VISTA MUNICIPAL CODE § 15.60

IV. MAINTENANCE REQUIREMENTS

Vacant Property Registration ordinances typically enumerate the owner's responsibilities regarding the maintenance of the property. Some vacant property registration programs require the submission of an action plan while others require owners to maintain the property according to certain maintenance standards. Some VPR ordinances require both.

A. Special Considerations in North Carolina

If a local government would prefer to stay within the general police power so as to avoid being subject to minimum housing procedures, the maintenance requirements set forth in the VPR ordinance should not regulate anything pertaining to a building's fitness or unfitness for human

habitation.⁶⁷ If regulating vacant buildings under both the general police power and minimum housing statutes, a local government should be explicit about which maintenance standards pertain to a property's fitness or unfitness for human habitation,⁶⁸ and which standards regulate purely aesthetic qualities, as the procedure for regulation established under the two conditions differs.⁶⁹ This situation illustrates the complexity of the relationship between the general police power and minimum housing statutes in North Carolina, and the challenge local governments face in enacting comprehensive code enforcement measures.

B. Action Plans

An "action plan" or "vacant building plan" is a written document prepared by the property owner regarding the vacant property. Requiring the submission of a vacant building plan at the time of registration sends the message that even with adequate maintenance the municipality will not permit extended vacancies.⁷⁰ Some jurisdictions assess a penalty if the action plan is not followed.⁷¹ Action plans might include the following:

- The expected period of vacancy;
- A timeline for occupancy, rehabilitation or demolition of the property;
- A maintenance plan for the time the property is vacant;
- A form granting permission for inspections; and
- A description of how the structure will be secured.

Examples:

The VPR ordinance of Albany, Georgia requires an action plan that contains each of the elements listed above:

At the time a structure is registered as required above, the owner shall submit to Planning and Development Services a Statement of Plan. The Plan shall include at least the following: The length of time the owner expects the vacancy to continue; the proposed rehabilitation or improvements to be made to the structure so as to make the structure suitable for its intended use; a form in which the owner grants permission to the Director or its designee to enter and inspect the property; a description of what will be done to secure the structure so that it will not become open to the general public.

⁶⁷ See *Supra* notes 1-3 and accompanying text. For a more detailed analysis, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 *Campbell L. Rev.* 1 (2009).

⁶⁸ See *Supra* note 3 and accompanying text.

⁶⁹ For a more detailed analysis, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 *Campbell L. Rev.* 1 (2009).

⁷⁰ Schilling, *Code Enforcement*, *Supra*, at 132.

⁷¹ See *infra* note 84 and accompanying text.

ALBANY, GA., CODE OF ORDINANCES § 16-13.3

C. Maintenance Standards

The standard to which vacant properties must be maintained should be clearly outlined for property owners so as to avoid confusion and to maximize compliance.⁷² In enumerating the maintenance standards required, the ordinances surveyed typically contain the following:

- Information as to what structures or areas must be maintained;
- The level to which properties must be maintained;
- Whether identification and contact information must be posted on the property.

i. Structures and Areas that Must be Maintained

VPR ordinances typically specify which structures or features must be maintained according to the standards set forth therein. This might include primary and accessory buildings located on the property as well as external property areas surrounding the buildings.

EXAMPLES

Albany Georgia specifically includes accessory buildings in their VPR ordinance:

Any accessories or appurtenant structures, included but not limited to garages, sheds and other storage facilities shall meet the same standards.

ALBANY, GA., CODE OF ORDINANCES § 16-14

The VPR ordinance of Wheeling, West Virginia includes external property areas in addition to structures:

Exterior property areas are to be mowed regularly and non-cultivated gardens maintained at no more than 17 inches of growth. All noxious weeds are prohibited.

WHEELING, W.VA., CODIFIED ORDINANCES OF WHEELING, § 1718.03

ii. Level to Which Properties Must be Maintained

All of the VPR ordinances surveyed require vacant properties to be maintained to certain standards. This is typically accomplished in one of three ways:

- Requiring that the property exhibits no evidence of vacancy;
- Requiring that the property is maintained according to the standards of a separate statute; or
- Requiring that the property is maintained to certain enumerated standards.

⁷² See Schilling, Code Enforcement, *Supra*, at 134. See also Mallach, Bringing Buildings Back, *Supra*, at 149.

EXAMPLES

VPR ordinances that require vacant properties to exhibit “no evidence of vacancy” typically define that term. Often the definition includes, but does not limit itself to, an enumerated list of maintenance standards. The definition of “no evidence of vacancy” in Chula Vista, California’s VPR ordinance provides an example:

"Evidence of vacancy" means any condition that on its own or combined with other conditions present would lead a reasonable person to believe that the property is vacant.

CHULA VISTA, CAL., CHULA VISTA MUNICIPAL CODE § 15.60.020

The VPR ordinance of Richmond, Virginia takes the “no evidence of vacancy” approach to maintenance, providing a broad standard rather than detailing specific maintenance requirements:

All Vacant Structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health and safety.

RICHMOND, VA., CODE OF THE CITY OF RICHMOND VA. § 14-15

Mount Rainier, Maryland and Winchester, Virginia provide examples of maintenance standards that reference an established property management code:

Vacant properties must comply with the Property Maintenance Code for the City of Mount Rainier, which follows The International Property Maintenance Code, 2006 Edition, as published by the International Code Council, Inc.

MOUNT RAINIER, MD., CODE OF ORDINANCES § 3A

All vacant structures are required to be maintained in a clean, safe, secure and sanitary condition as provided in the Virginia Uniform Statewide Building Code so as not to cause a blighting problem or adversely affect the public health or safety.

WINCHESTER, VA., CODE OF ORDINANCES § 6-9

Riverdale, Georgia provides an example of an ordinance that enumerates specific standards to which the property must be maintained:

A vacant structure shall be considered properly maintained if it: 1. Has all doors and windows and other openings weather-tight and secured against entry by the general public as well as animals. Without limiting the generality of the foregoing, all doorways, windows and other openings shall be in accordance with the provision below governing the securing of vacant structures. 2. All roof and roof flashings shall be sound and tight such that no rain will penetrate the structure and must allow for appropriate drainage so

as to prevent deterioration of the interior walls or other interior portions of the structure. 3. The structure must be maintained in good repair, be structurally sound and free from rubbish, garbage and other debris. 4. Supporting members of the structure shall be capable of bearing both live and dead loads and the foundation walls likewise shall be capable of supporting an appropriate load. 5. The exterior of the structure shall be free of loose or rotten materials as well as holes. Any exposed metal, wood or other surface shall be protected from the elements by appropriate weather coating materials (paint or similar treatment). 6. All balconies, canopies, signs, metal awnings, stairways, fire escapes or other overhanging extensions shall be in good repair, appropriately anchored. The exposed metal and wood surface of such overhanging extensions shall also be protected from the elements against rust or decay by appropriate application of paint or similar weather coating.

RIVERDALE, GA., CODE OF ORDINANCES § 18-123

iii. Postings and Placards

Some of the vacant property registration ordinances surveyed require the owner to post an identification placard on the property. This placard could contain the following information:

- Owner's name and contact information;
- 24-hour contact phone number of a local property management company;
- The expiration date of the vacant property registration;

Placard requirements typically specify from what materials the placard must be made, where on the property or structure it must be posted, the size of the placard, or from what distance it must be legible.

Requiring a posting on the vacant property helps with enforcement as it provides the local government with a point of contact for maintenance and security concerns.⁷³ On the other hand, by openly identifying vacant properties rather than masking the fact that they are vacant, this requirement could undermine the purpose of the ordinance. In deciding whether or not to require postings on vacant properties, a local government should consider the goals of the ordinance. A well kept database of vacant properties might accomplish the same end without advertising the vacant condition of a property.

EXAMPLES

Mount Rainier, Maryland provides an example of a VPR ordinance that requires the identification of vacant properties:

The owner or agent of the registered building shall place a City-provided identification placard on the building's exterior as directed by the City Manager so as to be clearly visible from the nearest public right-of-way. Such identification placard shall be kept in

⁷³ Schilling, Code Enforcement, *Supra*, at 143.

readable condition by the owner or agent, and shall provide the following information: owner's name, address, phone number, expiration date of registration.

MOUNT RAINIER, MD., CODE OF ORDINANCES § 3B-104

The VPR ordinance of Chula Vista, California sets specific standards for property identification:

The property shall be posted with name and 24 hour contact phone number of the local property management company. The posting shall be no less than 18 X 24 and shall be of a font that is legible from a distance of forty five 45 feet and shall contain along with the name and 24 hour contact number the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL." 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, or secured to the exterior of the building/structure facing the street to the front of the property so it is visible from the street, or if no such area exists on a stake of sufficient size to support the posting in a location that is visual from the street to the front of the property but not readily accessible to vandals. Exterior posting must be constructed of and printed with weather resistant materials.

CHULA VISTA, CAL., CHULA VISTA MUNICIPAL CODE § 15.60.060

V. FEES AND ENFORCEMENT

A. Registration Fees

Most of the Vacant Property Registration ordinances surveyed charge a fee at the time of registration. The registration fee is typically structured either as a flat fee or a graduated fee.⁷⁴

i. Special Considerations in North Carolina

Local governments in North Carolina may establish fees to offset the cost of a vacant property registration program. Fees should be calculated to offset costs incurred through actions relying on the general police power without including the costs of minimum housing activities.⁷⁵ A graduated fee system, however, would not be allowed under

⁷⁴ Schilling, Code Enforcement, *Supra*, at 131.

⁷⁵ In North Carolina, a local government may establish a fee to offset the costs of regulatory activities undertaken pursuant to the general police power, including the costs associated with regular inspections. Fees must be reasonable and must be used to defray the costs of administering the program. See *Homebuilders Assoc. of Charlotte, Inc. v. City of Charlotte*, 336 N.C. 37, 46 (1994). (concluding that a city has authority to assess user fees to defray the costs of regulation, provided such fees are reasonable). It is not clear whether it is permissible to charge fees for regulation under the minimum housing statutes. For a more detailed analysis, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 *Campbell L. Rev.* 1 (2009).

current North Carolina law.⁷⁶ Fee waivers may also be established in North Carolina provided the waiver is rationally related to a legitimate government purpose.⁷⁷

ii. Flat Fees

Flat fees are usually collected at the time of registration and at the time registration is renewed. Registration fees often are designated to be sufficient to cover the costs that the local government incurs in registering, inspecting and monitoring vacant properties.⁷⁸ In the ordinances surveyed, the cost of registration ranges from \$15 annually to \$600 bi-annually. Some VPR ordinances do not charge a fee at the time of renewal, such as that of Minneapolis, Minnesota, which charges a one-time registration fee of \$6,000.⁷⁹ Of the VPR ordinances surveyed that use a flat fee system, only that of Prince George's County, Md. does not require a fee at the time of registration.

The registration fee may vary depending on the type of property. Some ordinances, such as that of Portsmouth, Va. differentiate between boarded and non-boarded buildings. Others, like that of Mount Rainier, Md., differentiate between single-family dwellings and other buildings.

EXAMPLES

The VPR ordinance of Fredericksburg, Virginia provides an example of an annual registration fee requirement and of an ordinance that specifies that the fee be used to defray the cost of registration:

Every person filing registration forms shall pay an annual registration fee of \$25.00 to defray the cost of processing the registration.

FREDERICKSBURG, VA., CODE OF ORDINANCES § 18-4

Mount Rainier, Maryland, where the fee for single-family dwellings is half the amount charged other building types, provides an example of a fee that varies by building type:

The vacant building registration shall be filed with the City Manager. If the registration is for a building designed as other than a single-family dwelling and is required under Section 3B- 104.A.1 or Section 3B-104.A.2 above, it shall be accompanied by a filing fee of six hundred dollars (\$600.00). If the registration is for a building designed as a single-family dwelling and is required under Section 3B-104.A.3 or Section 3B-104.A.4 or Section

⁷⁶ For a more detailed analysis, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 *Campbell L. Rev.* 1 (2009).

⁷⁷ Utility fees and charges cannot be waived unless there is a utility business-related reason for the waiver. See Millonzi, Kara A., *Lawful Discrimination in Utility Rate Making*, *Local Finance Bulletin* 33 (October 2006).

⁷⁸ Schilling, *Code Enforcement*, *Supra*, at 134.

⁷⁹ US Conference of Mayors, *Vacant and Abandoned Properties: Survey and Best Practices*, 18 (2008). The fee was recently raised from \$2,000 in an effort to discourage vacant and boarded buildings. *Id.*

3B-104.A.5 above, it shall be accompanied by a filing fee of three hundred dollars (\$300.00).

MOUNT RAINIER, MD., CODE OF ORDINANCES § 3B-104

iii. Graduated Fees

Graduated fees increase periodically, generally upon renewal of registration. Having a graduated fee system serves several policy goals. It provides a disincentive for the owner to “warehouse” the property or to speculate on the market⁸⁰ and can cover the administration and enforcement costs of the program.⁸¹

The VPR ordinance of Salisbury, Maryland provides an example of a typical graduated registration fee:

The fees for registration of vacant dwellings shall be determined based on the following scale: (a) No fee for properties that are vacant for less than one year; (b) \$500.00 for properties that are vacant for at least one year but less than two years. (c) \$1,000.00 for properties that are vacant for at least two years but less than three years. (d) \$2,000.00 for properties that are vacant for at least three years but less than five years. (e) \$3,500.00 for properties that are vacant for least five years but less than ten years, and (f) \$5,000.00 for properties that are vacant for at least ten years, plus an additional \$500.00 for each year in excess of ten years.

SALISBURY, MD., SALISBURY MUNICIPAL CODE § 15.25.020

iv. Fee Waivers, Reductions and Refunds

Vacant Property Registration ordinances typically allow the code enforcement director the flexibility to waive or reduce registration fees. Situations may arise where it is appropriate to waive the fee to advance a public purpose, such as when a community land trust owns several vacant properties and is working toward developing a plan for their reuse or is securing the financing necessary for an affordable housing project.⁸² Some programs provide a refund if a property is re-occupied within a certain period of time, or waive the fee if the owner is actively seeking to sell or rent the property.

⁸⁰ See Kelly, James J. Jr., Refreshing the Heart of the City: Vacant Building Receivership as a Tool for Neighborhood Revitalization and Community Empowerment, *Journal of Affordable Housing*, 13, 2, (Winter 2004). (“A speculating investor may acquire a vacant property with no intention of ever renovating the property. The investor will buy up dilapidated properties cheaply and do nothing but continue to pay the taxes on them. He will hope that the revitalization work of others in the community will make the neighborhood as a whole more attractive, thereby enhancing the value of his investment. By the time the investor sells, the property will be in worse shape than when he bought it. If property values in the area have increased sufficiently, however, the sale price, although still low, may net a large percentage gain on his total investment.”)

⁸¹ Schilling, Code Enforcement, *Supra*, at 131.

⁸² *Id.* at 132.

EXAMPLES

The VPR ordinance of Mount Rainier, Maryland offers a fee reduction for compliance with the requirements of the action plan submitted at the time of registration:

If the building is still vacant at the expiration of any six-month registration period but the requirements of the vacant building plan are completed, the owner shall re-register such building, without the requirement of a new vacant building plan but with a payment of twenty-five percent (25%) of the usual filing fee.

MOUNT RAINIER, MD., CODE OF ORDINANCES § 3B-104

The VPR ordinance of Wilmington Delaware provides an extensive list of extenuating circumstances that justify the waiver of the registration fee:

A one-time waiver of the registration fee or an extension of a waiver for up to 90 days may be granted by the commissioner of licenses and inspection upon application of the owner and upon review and advice of the law department, within 30 calendar days from the date of the bill for the registration fee, or if denied by the commissioner of licenses and inspections, upon appeal to the license and inspections review board, if the owner: (i.) Demonstrate with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and (ii.) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or (iii.) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period. (iv.) Has paid all past due vacant registration fees and all other financial obligations and/or debts owed to the City of Wilmington which are associated with the vacant property...

WILMINGTON, DEL., CODE OF ORDINANCES CHAPTER 4 § 125.0

B. Enforcement

Assessing civil or administrative penalties for non-compliance serves as an enforcement mechanism and provides an incentive for property owners to abide by the ordinance.⁸³ Penalties might be assessed for failure to register the property, failure to report changes to registration information, failure to renew the registration, failure to meet maintenance and security requirements, and failure to submit or implement an action plan.⁸⁴ Some of the VPR ordinances surveyed vary the amount of penalties based on the district in which the vacant property is located. Some ordinances count each day that the owner is in violation as a separate and distinct violation subject to an additional fine. The administrator of the VPR program typically monitors registered properties for compliance and collects fees from those in violation of the ordinance.⁸⁵ Failure to enforce

⁸³ Schilling, Code Enforcement, *Supra*, at 132.

⁸⁴ *Id.*

⁸⁵ *Id.*

penalties undermines the program by encouraging non-compliance and frustrating those who do comply.

i. Special Considerations in North Carolina

A local government may assess civil penalties against property owners for violations of ordinances enacted pursuant to the general police power according to N.C.G.S. 160A-175 for cities and N.C.G.S. 153A-123(c) for counties.⁸⁶ Where minimum housing standards are implicated, however, it is probably not permissible, as the statutes regulating minimum housing standards do not contain the authority to assess civil penalties.⁸⁷

North Carolina requires that civil penalties for violations of ordinances not exceed \$500.⁸⁸ However, a local ordinance could provide that each day's continuing violation is a separate and distinct offense.⁸⁹

ii. Options for Enforcement

To collect penalties assessed for violation of a VPR ordinance, many municipalities utilize departments who have expertise in collecting outstanding debts, such as the treasurer's office or utility departments.⁹⁰ If the property owner fails to pay after pursuing informal methods, local governments have two legal options for enforcement: a civil judgment lien or a nuisance abatement lien and special tax assessment.⁹¹ A more severe option is criminal prosecution of the property owner.

EXAMPLES

The VPR ordinance of Wheeling, West Virginia provides an example of a municipal lien used as an enforcement mechanism:

If the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the City and the City may commence a civil action to collect such unpaid debt.

WHEELING, W.VA., CODIFIED ORDINANCES OF WHEELING, § 1718.02

The VPR ordinance of Mount Rainier, Maryland provides an example of the nuisance abatement lien approach to enforcement:

⁸⁶ N.C.G.S. 160A-175 reads "An ordinance may provide that violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance."

⁸⁷ Case law suggests that minimum housing powers may only be exercised in the manner provided in the minimum housing statutes. For a more detailed analysis, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 *Campbell L. Rev.* 1 (2009).

⁸⁸ See N.C.G.S. 160A-174(b), 153A-123(b), and 14-4.

⁸⁹ See N.C.G.S. 160A-174(g), 153A-123(g). See also, David W. Owens, *Land Use Law in North Carolina*, 176-177 (2006).

⁹⁰ *Id.* at 133.

⁹¹ *Id.*

A lien may be created on real property for monies expended by the City for the abatement of violations of this Chapter where the responsible party refuses or fails to comply with the lawful order of the City after due notice thereof.

MOUNT RAINIER, MD., CODE OF ORDINANCES § 3B-104

Washington, D.C. leaves open the option of criminal prosecution in their VPR ordinance:

The owner or agent of a vacant property is subject to fines up to \$2000, imprisonment for 90 days, or both, if he or she: 1. Files any false or misleading registration information; 2. Refuses to allow OVP to inspect the property; or 3. Fails to register and pay all required fees after receiving a notice of property vacancy, notice of delinquency of registration or fee payment, or notice of denial or revocation of registration.

WASHINGTON D.C., OFFICIAL CODE § 42-3131.06

The VPR ordinance of Norfolk, Virginia charges more for a violation that occurs in a conservation or rehabilitation district or in a designated blighted area:

Failure to register shall result in a fifty dollar (\$50.00) civil penalty or in a two hundred fifty dollar (\$250.00) civil penalty if the property is located in a conservation or rehabilitation district or in a designated blighted area.

NORFOLK VA., CODE OF ORDINANCES § 11.1-16

Salisbury, Maryland's VPR ordinance considers each day a separate and distinct violation:

Any person found in violation of the provisions of this chapter shall be guilty of a municipal infraction and shall be subject to a fine not to exceed five hundred dollars (\$500) per violation. Each day a violation remains uncorrected is a separate violation subject to an additional citation and fine.

SALISBURY, MD., SALISBURY MUNICIPAL CODE § 15.25.080

APPENDIX A: REVIEW OF LITERATURE, ORGANIZED BY THEME

Impact of vacant and abandoned properties on a community

- Bowman, Ann O'M. and Michael A. Pagano. "Transforming America's Cities: Policies and Conditions of Vacant Land." *Urban Affairs Review* 35.4 (2000): 559-581.
 - Abstract: In this article, the authors summarize new vacant-land survey data, examine the conditions and causes of vacant land, analyze city policies toward vacant land, and explore the possible interconnections among conditions, causes, and policies.
- National Vacant Properties Campaign, *Vacant Properties: The True Costs to Communities*, Washington, DC: NVPC, August 2005.
(<http://www.vacantproperties.org>)
 - Abstract: The aim of this report is to summarize the many and varied costs that vacant and abandoned properties impose upon communities. It compiles research from across the country quantifying a wide variety of costs, including city services (nuisance abatement, crime and fire prevention), decreased property values and tax revenues, as well as the costs born by homeowners and the issue of the spiral of blight.
- ReBuild Ohio and Community Research Partners, "\$60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities" (2008).
 - Abstract: This research documents the magnitude and cost of the vacant and abandoned properties problem in eight Ohio cities—Cleveland, Columbus, Dayton, Ironton, Lima, Springfield, Toledo, Zanesville.
- Temple University Center for Public Policy and Eastern Philadelphia Organizing Project, "Blight-Free Philadelphia: A Public-Private Strategy to Create and Enhance Neighborhood Value" (2001).
 - Abstract: Details impact of vacant housing on surrounding neighborhoods.

Vacant property registration programs in general

- Klein, Robert, *Vacant Property Ordinances: Finding Common Ground on a National Scale*, MANAGING REO, June 11, 2008, at 22.
 - Abstract: This article discusses the mortgage industry's reaction to vacant property registration programs
- Mallach, Alan, *Bringing Buildings Back: From Abandoned Properties to Community Assets* (2006).
 - Abstract: This book provides policymakers and practitioners with the first in-depth guide to understanding and dealing with the many ramifications that the issue of abandoned properties holds for the future of our older

cities. Combining practical suggestions with a thoughtful exploration of policy, Mallach pulls together insights from law, economics, planning, and design to address all sides of the problem, from how abandonment can be prevented to how best to bring these properties back into productive reuse.

- Mallach, Alan, How to Spend \$3.92 Billion: Stabilizing Neighborhoods by Addressing Foreclosed and Abandoned Properties, Philadelphia, PA: Federal Reserve Bank of Philadelphia, October 2008.
 - Abstract: This report gives guidance on the best use of funds appropriated by the Housing and Economic Recovery Act of 2008 for the purpose of assisting states, counties, and cities in their efforts to stabilize hard-hit neighborhoods.
- Mallach, Alan, Tackling the Mortgage Crisis: 10 Action Steps for State Government, Brookings Institute Paper, 5/1/09.
 - Abstract: This paper describes how state government can tackle both the immediate problems caused by the wave of mortgage foreclosures and prevent the same thing from happening again. After a short overview of the crisis and its effect on America's towns and cities, the paper outlines options available to state government, and offers ten specific action steps, representing the most appropriate and potentially effective strategies available for coping with the varying dimensions of the problem.
- National Governor's Association, Emerging Trends: State Actions to Tackle the Foreclosure Process, February 2009.
 - Abstract: NGA Center for Best Practices report which "examines the latest actions governors have taken to mitigate foreclosures, stabilize neighborhoods, and prevent future mortgage crises."
- Schilling, Joseph, Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes, 2 Alb. Gov't L. Rev. 101, (2009).
 - Abstract: Law review article that details different policy approaches to vacant and foreclosed homes.

Case Studies

- Accordino, John and Gary T. Johnson. Addressing the Vacant and Abandoned Property Problem. *Journal of Urban Affairs* 22.3 (2000): 301-315.
 - Abstract: This study sheds some light on the nature of the property abandonment problem and on current city efforts to address it. It is based upon the findings of a survey of the 200 most populous central cities in the United States, conducted during the summer and fall of 1997, and on

follow-up interviews with a portion of the survey population, conducted during the summer of 1998. The findings of the survey and interviews indicate that vacant and abandoned property is perceived as a significant problem by elected and appointed officials in the nation's largest central cities.

- Dick, Andrew “Blight Fight,” *Planning* 73 (6) (2007).
 - Abstract: This article speaks to the evolution of the Wayne County Nuisance Abatement Program (Detroit) and whether its tactics are legal.
- Pierce, Emmett, *Blight-Prevention Law Emerges as a National Mode: Chula Vista Forces Lenders to Maintain Foreclosures*, *San Diego Union Trib.*, Oct. 12, 2008, at A1.
 - Abstract: This newspaper article covers the Chula Vista, CA vacant housing ordinance.
- US Conference of Mayors, *Vacant and Abandoned Properties: Survey and Best Practices*, retrieved from www.usmayors.com (June, 2008).
 - Abstract: This installment is the third in the Conference of Mayors' series of reports on vacant and abandoned properties on the efforts being made by mayors across the nation to minimize the problems that vacant and abandoned properties are creating, and to restore these properties to productive use as homes and businesses. The survey was completed by 60 cities and shows that very few have escaped higher numbers of vacant and abandoned properties during the last year as a result of the nation's mortgage foreclosure crisis.

APPENDIX B: LIST OF ORDINANCES SURVEYED

- Albany, Ga., Code of Ordinances §§ 16-13.1 et. seq. (2008).
- Albuquerque, N.Mex., Code of Ordinances § 14-2-5-14 (2009).
- Alexandria, Va., Code of Ordinances Title 8 Article H § 8-1-130 (2009).
- Atlanta, Ga., Proposed Ordinance to Require Registration for Vacant Properties (2009).
- Baltimore, Md., Baltimore City Code Article 13 Subtitle 4 § 4-6 (2006).
- Chula Vista, Cal., Chula Vista Municipal Code § 15.60 (2007).
- Fredericksburg, Va., Code of Ordinances § 18-4 (2006).
- Mount Rainier, Md., Code of Ordinances § 3B-101 et. seq. (2005).
- Norfolk Va., Code of Ordinances § 11.1-16 (2009).
- Portsmouth, Va., Code of Ordinances § 17-131 et. seq. (2009).
- Prince George's County, Md., The Prince George's County Code, § 13-1101 et. seq. (2009).
- Pulaski, Va., Code of Ordinances § 18-71 et. seq. (2008).
- Richmond, Va., Code of the City of Richmond Va. § 14-15 (2006).
- Riverdale, Ga., Code of Ordinances § 18-120 et. seq. (2009).
- Salisbury, Md., Salisbury Municipal Code § 15.25 (2005).
- Washington D.C., Official Code § 42-3131 (2009).
- Wheeling, W.Va., Codified Ordinances of Wheeling, § 1718 (2009).
- Wilmington, Del., Code of Ordinances Chapter 4 § 125.0 (2009).
- Winchester, Va., Code of Ordinances § 6-9 (2008).

APPENDIX C: TOWN OF WARRENTON'S VPR ORDINANCE

CHAPTER 154: Vacant Commercial Property Registration Ordinance

154.01 Intent and Scope.

It is the purpose and intent of the Warrenton Town Board of Commissioners, through the adoption of this Chapter, to establish a vacant property registration ordinance as a mechanism to preserve the historic integrity of Warrenton's Historic District and to protect the Town's commercial districts from becoming blighted through the lack of adequate maintenance and security of abandoned and vacant properties. Additionally the Town desires to deter crime and theft of materials, to minimize loss of property value to vacant properties and surrounding occupied properties, to reduce the risk of damage from fire, flooding or other hazards, and to promote the comfort, happiness and emotional stability of area residents. The Town finds that the presence of properties exhibiting evidence of vacancy pose special risks to the health, safety, and welfare of the community and therefore require heightened regulatory attention. The provisions of this Chapter shall apply to all properties in the C-1 and C-2 Business districts of the Town of Warrenton.

154.02 Definitions.

For the purposes of this Chapter, certain words and phrases used in this Chapter are defined as follows:

"Days" means consecutive calendar days.

"Evidence of Vacancy" means any aesthetic 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 include, but are not limited to, overgrown or dead vegetation, extensively chipped or peeling exterior paint, exterior walls in poor condition, porches and steps in poor condition, roof in poor condition, broken windows and other signs of general disrepair, accumulation of newspapers, circulars, flyers or mail, past due utility notices or disconnected utilities, accumulation of trash, junk or debris, the absence of window coverings such as curtains, blinds, or shutters, the absence of furnishings or personal items consistent with commercial habitation, statements by neighbors, passersby, delivery agents, government employees that the Property is vacant.

"Government Agency" means any public body having authority over the Property and residents of the Town, including but not limited to the Town of Warrenton, Warren

County, Warrenton Police Department, Warrenton Rural Volunteer Fire Department, Warren County Sheriff's Office

"Government Official" means any public official representing a public body which has authority over the Property and residents of the Town, including but not limited to the Town Administrator, County Building Inspector, Town Police Chief, County Fire Marshall, Mayor.

"Historic District" means the state-designated Warrenton Historic District, as listed in the National Register of Historic Places and/or defined in the ordinances establishing the Warrenton Historic District Commission.

"Local" means located within forty (40) road or driving miles distance of the subject Property.

"Non-residential Property" means any real property used or intended to be used for anything other than residential property as defined herein.

"Out of Area" means located in excess of forty (40) road or driving miles distance away from the subject Property.

"Owner" means any person, partnership, association, corporation or fiduciary having a legal or equitable title or any interest in any real property. No trustee in any Deed of Trust shall be considered an owner.

"Owner of Record" is the person or entity listed on recorded deed, probated will or heir by intestacy.

"Property" means any unimproved or improved real property or portion thereof, situated in the Town and includes the buildings or structures located on the Property regardless of condition.

"Residential Property" means a building, or portion thereof, designed exclusively for residential occupancy, including one-family, two-family, multiple dwellings, mobile homes, house trailers, boarding and lodging houses, apartment houses, and apartment hotels.

"Town" means the Town of Warrenton corporate limits and its Extra Territorial Jurisdiction.

"Utilities" means water, sewer, telephone, natural and propane gas, and electricity services.

“Vacant” means a Property that has not been legally occupied for thirty days. Legally occupied means occupancy by the owner or any business or individual whose presence therein is with the consent of the owner.

154.03 Registration.

- (a) Any vacant commercial property located within the Town’s C-1 and C-2 districts must be registered by the Owner with the Town Administrator, either (1) of the Owner of a Vacant Property’s own accord before receiving a Notice of Registration Requirement, or (2) within 30 days of receiving a Notice of Registration Requirement from the Town.
- (b) The Town will send a Notice of Registration Requirement to the Owner of Record of Properties that exhibit Evidence of Vacancy. Owner shall register Property within the time period set forth in Section 3(a) of this Chapter unless Owner can provide clear and convincing evidence to the Town Administrator, within such time period, that the Property is not Vacant.
- (c) The Registration shall contain:
 - (i) the name of the Owner (corporation or individual),
 - (ii) the direct street/office mailing address of the Owner and P.O. Box if applicable,
 - (iii) a direct contact name and phone number
 - (iv) the name, address and telephone number of any local property management company hired by the Owner to meet the Maintenance requirements of this Chapter if Owner’s principal residence is not Local.
- (d) Any changes in the information in (b)(i)-(b(iv) of this Section shall be reported to the Town within thirty (30) days of such changes.
- (e) Registration must be renewed annually.
- (f) Vacant properties shall remain subject to the annual registration, maintenance, and security requirements of this Chapter as long as they remain Vacant.
- (g) Once the Property is no longer Vacant or is sold, the owner must provide written proof of occupancy or sale to the Town Administrator.

154.04 Fees.

- (a) The fee for registering a Vacant Property shall be \$15 annually, beginning on July 1. Fees will not be prorated.
- (b) Registration fee may be waived by the Town Council if Owner can demonstrate with clear and convincing evidence (1) that the Property has been sold, or (2) that the Property will be occupied within 30 days from the date of Notice of Registration Requirement.

154.05 Maintenance Requirements.

Properties subject to this Chapter shall be kept in compliance with the following maintenance requirements:

- (a) The exteriors of building(s)/structure(s) on the Property shall be painted and maintained in a way that does not exhibit any Evidence of Vacancy.
- (b) The yard(s) of the Property shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (c) The deck(s) and porch(s) located on the Property shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (d) The window(s) and door(s) of building(s)/structure(s) of the property shall be intact and operable and shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (e) Instances of visible rotting of building(s)/structure(s) located on the Property or portion thereof shall be corrected in order to eliminate Evidence of Vacancy, with the exterior painted and kept in good aesthetic condition.
- (f) The Property shall be maintained so as to exhibit no Evidence of Vacancy.
- (g) The storefronts and facades of buildings shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (h) The interiors, when visible to passersby through storefront windows, shall be maintained in a way that does not exhibit Evidence of Vacancy.

154.06 Security Requirements.

Vacant properties subject to this Chapter shall comply with the following security requirements.

- (a) The Property shall be maintained in a secure manner so as not to be accessible to unauthorized persons. This includes, without limitation, the closure and locking of windows, doors (including but not limited to walk-through, sliding, and garage), gates, pet doors, and any other such opening of such size that it may allow a child to access the interior of the Property or structure(s).
- (b) Broken windows shall be replaced and/or re-glazed; windows at street level shall not be boarded up.

154.07 Requirement to Hire Local Property Management Company for Out of Area Owners.

- (a) If the Property Owner's principal residence is not Local, then a Local property management company shall be contracted to fulfill the maintenance and security requirements of this Chapter, set forth in Sections 5 and 6, and any other applicable laws.
- (b) The Property shall be posted with the name and 24-hour contact phone number of the local property management company. The posting shall be 18 inches by 24 inches and shall be of a font that is legible from a distance

of 45 feet and shall contain along with the name and 24-hour contact number the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL." The posting shall be placed in the interior of a window facing the street to the front of the Property so it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the Property so it is visible from the street or, if no such area exists, on a stake of sufficient size to support the posting in a location that is visible from the street to the front of the Property but not readily accessible to vandals. The exterior posting must be constructed of and printed with weather resistant materials.

- (c) The requirement set forth in part (a) of this section may be waived by the Town Board for owners who (1) reliably demonstrate an ability to maintain the property and (2) have not received any citations for maintenance violations in the previous quarter.

154.08 Inspections.

The Town shall have the authority and the duty to inspect properties subject to this Chapter for compliance and to issue citations for any violations. The Town shall have the discretion to determine when and how such inspections are to be made, provided that their policies are reasonably calculated to ensure that this Chapter is enforced.

154.09 Enforcement; Violations; and Penalties.

- (a) It shall be unlawful for any Owner to be in violation of any of the provisions of this Chapter.
- (b) Any person who violates a provision of this Chapter or fails to comply with any order made thereunder and from which no appeal has been taken, or who shall fail to comply with such order as affirmed or modified by appeal, or by a court of competent jurisdiction, within the time fixed herein, shall severally, for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable as provided in this Chapter.
- (c) The imposition of one penalty for any violation shall not excuse the violation, or authorize its continuance.
- (d) All such persons shall be required to submit an acceptable plan of action to the Town Administrator within 10 business days of notification. This plan of action must include, but is not limited to, a description of the work to be done, by whom and a specific schedule. Plans shall be reviewed by the Board of Commissioners and work is to commence within 15 days of Board approval. When not otherwise specified, failure to meet any stated condition within 10 days of required action shall constitute a separate offense.
- (e) Penalties for failure to comply:
 - 1) Initial Registration. Failure to initially register with the Town within the time frame required is punishable by a civil penalty of \$50.

- 2) Changes to Registration. Failure to report changes to registration information within time frame required is punishable by a civil penalty of \$50.
- 3) Annual Registration. Failure to register annually is punishable by a civil penalty of \$50.
- 4) Maintenance and Security Requirements. Failure to meet the maintenance and security requirements is punishable by a civil penalty of \$500.
- 5) Failure to submit plan. Failure to submit plan of corrective action is a violation punishable by a civil penalty of \$50.
- 6) Failure to implement plan. Failure to implement plan within 15 days of approval or complete it in a timely manner is a violation punishable by a civil penalty of \$500.

154.10 Appeals.

Any person aggrieved by any of the requirements of this Chapter may present an appeal in writing to the Board of Commissioners.

154.11 Severability.

Should any provision, section, paragraph, sentence or word of this Chapter be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this chapter shall remain in full force and effect.

154.12 Preemption.

Except as specifically preempted by N.C.G.S. § 160A-441, et. seq. 160A-439 or town ordinances promulgated pursuant to N.C.G.S. § 160A-439, et. seq., this Chapter shall apply to all Vacant Properties in the C-1 and C-2 zoning districts in the Town of Warrenton.