

Client Alert

Chapman and Cutler LLP
Attorneys at Law · Focused on Finance®

CURRENT ISSUES RELEVANT TO OUR CLIENTS

DECEMBER 16, 2011

Cook County Passes a Vacant Building Ordinance

On December 14, 2011, Cook County passed a Vacant Building Ordinance (“VBO”) that substantially mirrors the Chicago Vacant Building Ordinance that became effective on November 19, 2011. Like the Chicago VBO, the Cook County VBO imposes substantial obligations on mortgage lenders.

The Cook County VBO applies to buildings outside the limits of a municipality and to buildings within municipalities that elect to participate in the Cook County VBO. To date, no municipalities have formally elected to participate, but several have indicated their intention to do so.

Under the Cook County VBO, mortgage lenders of residential property must, among other things, register the property and pay a \$250 fee (the Chicago VBO registration fee is \$500), secure the doors and windows, winterize the property, maintain all grass and weeds, clear snow from the walkway to the main entry door, maintain fences, and post a sign with the registration information.

The VBO also provides several affirmative defenses to the potential fines of \$500-\$1,000 per day, including but not limited to: the building was occupied at the time of violation, another owner or mortgagee has registered the building and the registration is current, all violations have been cured within 30 days of the notice of violation, the lender was a junior lien holder, a receiver has been appointed, and the borrower is actively participating in the foreclosure.

The Cook County VBO will go into effect the third week of February.

For further details, please see the attached most recent version of the proposed Cook County Vacant Building Ordinance (please note that the official version has not yet been published and earlier versions of the VBO have been circulated online and cited in articles with an incorrect effective date) or call Dianne Rist (312-845-3404) or Jennifer Majewski (312-845-3745).

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© Chapman and Cutler LLP, 2011. All Rights Reserved.

Attorney Advertising Material

(Substitute)

PROPOSED ORDINANCE

Sponsored by

THE HONORABLE BRIDGET GAINER, COUNTY COMMISISONER

Co- sponsored by

TONI PRECKWINKLE, PRESIDENT, COUNTY BOARD OF COMMSISIONERS and THE
HONORABLE EARLEAN COLLINS, JOHN DALEY, ELIZABETH GORMAN, JESUS
GARCIA, JOAN PARTRICIA MURPHY, TIMOTHY SCHNEIDER, PETER SILVESTRI,
DEBORAH SIMS, LARRY SUFFREDIN, ROBERT STEELE and JEFFREY TOBOLSKI,
COUNTY COMMISSIONERS

VACANT BUILDING ORDINANCE

BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 102 Buildings and Building Regulations, Sec. 102-2. through Sec. 102-24., of the Cook County Code are hereby enacted as follows:

Sec. 102- 2. Short title.

This section shall be known and may be cited as "The Cook County Vacant Building Ordinance."

Sec. 102-3. Applicability.

This ordinance applies to:

- (1) buildings within Cook County, located outside of the limits of a municipality, and

- (2) buildings within Cook County located within the boundaries of a participating municipality.

Sec. 102-4. Definitions.

The following words and terms shall have the meanings set forth in this section, except where otherwise specifically indicated.

Appropriate enforcing authority means the:

- (1) Department of Building and Zoning, where the building is located in an unincorporated area of Cook County; and
- (2) persons authorized by a participating municipality to enforce the Cook County Vacant Building Ordinance located within the boundaries of that participating municipality.

Default means, with respect to a residential building containing four or fewer dwelling units, when the mortgagor is 60 days past due on the mortgagor's obligation to make a scheduled payment under a mortgage or a mortgage note. With respect to all other residential buildings, "default" shall mean when the mortgagor is 90 days past due on the mortgagor's obligation to make a scheduled payment under a mortgage or a mortgage note.

Enforcing authority means the Department of Building and Zoning, with respect to vacant buildings located in unincorporated areas in Cook County and, with respect to buildings located within a participating municipality, persons authorized by a participating municipality to enforce the Cook County Vacant Building Ordinance, within the boundaries of that participating municipality.

Mortgage means any consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation. The term includes, without limitation:

- (1) mortgages securing reverse mortgage loans;
- (2) mortgages securing revolving credit loans;
- (3) every deed conveying real estate, although an absolute conveyance in its terms, which shall have been intended only as a security in the nature of a mortgage; and
- (4) equitable mortgages.

Mortgagee means:

- (1) the holder of an indebtedness or obligee of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder;
- (2) any person claiming through a mortgagee as successor; and
- (3) any person identified as such in a recorded document which has not been released, assigned, or superseded of record.

Mortgagor means the person whose interest in the real estate is the subject of the mortgage and any person claiming through a mortgagor as successor. Where a mortgage is executed by a trustee of a land trust, the mortgagor is the trustee and not the beneficiary or beneficiaries.

Municipality means an enforcing authority, village, or incorporated town in Cook County.

Owner means any person who alone, jointly or severally with others:

- (1) Has legal title to the property, with or without accompanying actual possession thereof: or
- (2) Has charge, care or control of the property as owner or agent of the owner or an executor, administrator, trustee, or guardian of the estate of the owner: or
- (3) Is the agent of the owner for the purpose of managing, controlling the property or collecting rents, or is any other person managing or controlling the property or is any person entitled to the control or direction of the management or disposition of the property.

Participating municipality means a municipality which has entered into an intergovernmental agreement with Cook County to enforce the Cook County Vacant Building Ordinance within the boundaries of that municipality.

Property means any real, residential, commercial or industrial property, or portion thereof, located within unincorporated Cook County or within the boundaries of a participating municipality, including buildings or structures situated on the property.

Residential property means buildings of three stories or less in height where the whole building or parts thereof are designed or used as residential units or auxiliary uses to a residential unit.

Vacant means a building which is lacking habitual presence of human beings who have a legal right to be on the premises, or at which substantially all lawful business or construction operations or residential occupancy has ceased, or which is substantially devoid of content. In determining whether a building is vacant, it is relevant to consider, among other factors, the percentage of overall square footage of the building or floor to the occupied space, the condition and value of any items in the building and the presence of rental or for sale signs on the property; provided that a residential property shall not be deemed vacant if, a person or entity with an interest in the property proves, by a preponderance of evidence that, it has been used as a residence by a person entitled to possession for a period of at least three months within the previous nine months and a person entitled to possession intends to resume residing at the property; and further provided that multi-family residential property containing ten or more dwelling units shall be considered vacant when ninety percent or more of the dwelling units are unoccupied. A property shall not be considered vacant if there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

Winterize means cleaning all toilets and completely draining all plumbing and heating systems

Sec. 102-5. Obligation to register.

(a) The owner of any building that has become vacant shall within 30 days, after the building becomes vacant or within 30 days after assuming ownership of the building, whichever is later, file a registration statement, including proof of liability insurance in the amount prescribed in Section 102-14, for each such building with the appropriate enforcing authority on forms provided by that department for such purposes and pay a registration fee in the amount prescribed in Section 102-6, for each registered building; provided, however, that all eleemosynary, religious, educational, benevolent or charitable associations organized on a not-for-profit basis and all governmental agencies shall be exempt from the payment of the registration fee. The registration shall remain valid for one year from the date of registration. The owner shall be required to renew the registration every year as long as the building remains

vacant. There shall be no fee for such renewal. The owner shall notify the Department of Building and Zoning, within 20 days, of any change in the registration information by filing an amended registration statement on a form provided by the Department of Building and Zoning for such purposes. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the County against the owner or owners of the building. Registration of a building in accordance with this section shall be deemed to satisfy the registration requirement set forth in Article V—Administration and Enforcement, Section 5.3-4 of the Cook County Building Code.

(b) The Department of Building and Zoning, with support from the Bureau of Technology, shall establish a website to publicize the registration information provided under this section in an online registry.

Sec. 102-6. Owner Registration fee.

The registration fee for each registered building shall be \$250 (the “base registration fee”). All fees and fines laid out in this section are in addition to any fees and fines in other sections of the Cook County Building and Zoning Ordinance. The base registration fee set forth above in this section shall be doubled if the applicable initial registration takes place not through voluntary and timely compliance, but as the result of an enforcing authority’s identification of a violation of this ordinance. Such doubled fee shall not be subject to reduction, during the relevant period, for having registered or renewed following the issuance of a citation for failure to register or renew.

The Department of Building and Zoning, with support from the Bureau of Technology, shall establish a website to publicize the registration information provided under this section in an online registry.

Sec. 102-7. Obligation to permit access for purposes of inspection.

After filing a registration statement the building owner shall provide for access to the appropriate enforcing authority to conduct an exterior and interior inspection of the building to determine compliance with this ordinance, following reasonable notice, during the period covered by the initial registration or any subsequent renewal.

Sec. 102-8. Owner Obligation to appoint agent.

In addition to other information required by the Commissioner of Building and Zoning, the registration statement shall include the name, street address and telephone number of a natural person 21 years of age or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process, in any court proceeding or administrative enforcement proceeding, on behalf of such owner or owners in connection with the enforcement of this Code. This person must maintain an office in Cook County, Illinois, or must actually reside within Cook County, Illinois. An owner who is a natural person and who meets the requirements of this subsection as to location of residence or office may designate himself as agent. By designating an authorized agent under the provisions of this subsection the owner is consenting to receive any and all notices of code violations concerning the registered building and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the registered building by service of the notice or process on the authorized agent. Any owner who has designated an authorized agent under the provisions of this subsection shall be deemed to consent to the continuation of the agent's designation for the purposes of this subsection until the owner notifies the Department of Building and Zoning of a change of authorized agent or until the owner files a new registration statement. Any owner who fails to register a vacant building under the provisions of this subsection shall further be deemed to consent to receive, by posting at the building, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

Sec. 102-9. Owner Obligation to post a sign.

The owner of any building that has become vacant shall, within 30 days:

(a) Post a sign affixed to the building indicating: the vacant building registration number and the name, address and telephone number of the owner or the owner's authorized agent for the purpose of service of process. The name, address and telephone number of a person responsible for day-to-day supervision and management of the building, if such person is different from the owner the authorized agent shall be indicated on the sign as well. The sign shall legible, be no smaller than 8.5 inches by 11 inches and placed in such a location so as to be visible from the nearest public street or sidewalk, whichever is nearer; and

(b) Maintain the building in a secure and closed condition and maintain the sign, until the building is again occupied or demolished.

Sec. 102-10. Owner Obligation to secure building.

The owner of any building that has become vacant, and any person maintaining, operating or collecting rent for any building that has become vacant shall, within 30 days, do the following to enclose and secure the building:

(a) Secure building so that all building openings shall be closed and secured, using secure doors, windows without broken or cracked panes, commercial-quality steel security panels, filled with like-kind material as the surrounding wall, or boarded with plywood installed and secured in accordance with the rules and regulations issues by the Department of Building and Zoning or appropriate enforcing authority, as applicable to prevent entry by unauthorized persons.

(b) Secure the building so that at least one building entrance shall be accessible from the exterior and secured with a door that is locked to allow access only to authorized persons. If two or more exit doors exist, a minimum of two exit doors shall be available to exit from the interior of the building, with at least one exit door available per 150 linear feet of horizontal travel at ground-floor level;

(c) Maintain the building in a secure and closed condition and maintain the sign until the building is reoccupied or demolished, repaired or completed with all permits required by the enforcing authority. If during the registration period and following the initial boarding and securing of the property in compliance with this section, the enforcing authority notifies the owner in writing that the property was found open or it has been judicially or administratively found to be open, in each case on two separate occasions at least 30 days apart, then the building shall thereafter be secured with only commercial-quality steel security panels or a method deemed equivalent by the enforcing authority.

(d) Foundations, basements, cellars, and crawlspaces shall be maintained in sound and watertight condition adequate to support the building, and protected against the entry of rodents or other animals;

(e) Exterior walls shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain or dampness to the interior portions of the walls or the interior spaces and shall be protected against the entry of rodents or other animals;

(f) Exterior windows and doors shall be maintained in sound condition, and good repair. Windows and doors shall fit tightly within their frames and the frames shall be constructed and maintained in such relation to the adjacent wall construction as to prevent rain from entering the building;

(g) Exterior windows and doors shall be equipped with hardware for locking and the locking mechanism shall be maintained in properly functioning condition;

(h) All points of possible ingress and egress including but not limited to exterior windows and doors shall be secured to prevent unauthorized entry;

(i) Any window which is broken cracked or missing glass or glazing shall be replaced and maintained in good repair or the building opening shall otherwise be adequately secured pursuant to this section;

(j) The roof shall be adequately supported, and shall be maintained in a weather tight condition; the gutters, downspouts, scuppers and appropriate flashing shall be in good repair and adequate to remove the water from the building or structure;

(k) Chimneys and flues shall be kept in sound, functional, weather tight condition and in good repair;

(l) Every outside stair or step shall be maintained in sound condition and in good repair; every porch, stoop, deck, veranda, balcony and walk shall be maintained in sound condition for its purpose;

(m) All exit areas shall have continuous exterior lighting from dusk to dawn: normal intensity of lighting shall be not less than two foot-candles per square foot on the floor surfaces within an eight-foot radius around said exit. This requirement may be met by the use of battery-powered or solar-powered lighting if such lighting meets the performance standards set by this paragraph.

Sec. 102-11. Interior maintenance standards.

The interior of any building shall be maintained by the owner as follows:

(a) It is prohibited to accumulate or permit the accumulation of junk, trash and debris, boxes, lumber, scrap metal, junk, vehicles or any other materials in such a manner that may

produce any health, fire, or safety hazard, or provide harborage for rodents or other animals on the premises; materials stored by the owner or permitted to be stored by the owner shall be stacked safely, and away from stairs or hallways, and any other places of ingress and egress;

(b) Every foundation, roof, floor, wall, stair, ceiling, and any other structural support shall be safe and capable of supporting the loads that normal use may cause to be placed thereon and shall be kept in sound condition and in good repair; floors and stairs shall be free of holes, grooves and cracks that could be potentially hazardous;

(c) Any plumbing fixtures shall either be winterized as defined in Section 102-4 or heated to resist being frozen;

(d) Every exit door shall be secured with an internal deadbolt lock, or with a locking mechanism deemed equivalent or better by the appropriate enforcing authority and every such exit door shall be capable of being opened from the inside easily and without the use of a key or special knowledge;

(e) Interior stairs shall have treads and risers that have uniform dimensions, are sound, securely fastened, and have no rotting, loose, or deteriorating supports;

(f) Every owner shall be responsible for the extermination of insects, rodents and other vermin in or about the premises.

Sec. 102-28-12. Minimum requirements for lot on which the vacant building stands.

In addition to any other applicable code requirements for each vacant property the owner must keep the lot on which the vacant building stands in compliance with the following requirements for as long as the property remains vacant:

(a) The lot the building stands on, and the surrounding public way shall be maintained as follows: All grass and weeds on the premises including abutting sidewalks, gutters and alleys

shall be kept below 10 inches in height, and all dead or broken trees tree limbs or shrubbery shall be cut and removed from the premises;

(b) The interior walkway leading to the main entry door, and any public sidewalk adjoining the lot shall be shoveled clear of snow;

(c) Junk, rubbish, waste, and any material that creates a health, safety or fire hazard including but not limited to any mail or flyers that have been delivered to the building shall not be permitted to accumulate on any portion of the exterior lot of the building;

(d) No portion of the lot nor any structure, vehicle, receptacle or object thereon shall be maintained or operated in any manner that causes or produces any health or safety hazard or permits the premises to become a rodent harborage or is conducive to rodent harborage;

(e) The lot shall be maintained so that water does not accumulate or stand on the ground;

(f) All fences and gates shall be maintained in sound condition and in good repair.

Sec. 102-13. Duty of owner where vacant building becomes violated, after the owner has provided proof that such building is unviolated.

For the purposes of this section, “unviolated” means a building: (i) that has a permanent door or window, as applicable, in each appropriate building opening, (ii) that has each such door or window secured to prevent unauthorized entry and (iii) that has all its door and window components, including without limitation frames, jambs, rails, stiles, muntins, mullions, panels, sashes, lights and panes, intact and unbroken. A building that does not meet the definition of “unviolated” shall be deemed “violated”.

It shall be a violation of this Section for a vacant building to become violated, after the owner has provided proof to the appropriate enforcing authority that such building is unviolated.

With respect to a vacant building represented by the owner as unviolated, if the enforcing authority determines, based on an inspection report prepared by the enforcing authority that such building is violated, said enforcing authority shall send by certified mail a written notice of violation to the person responsible for day-to-day supervision and management of the building or to the authorized agent for service of process as identified on the sign required by Section 102-9, or if there is no such sign, then sent by certified mail to the owner of record. The fine for violation of this section shall be not less than \$500.00 and not more than \$1,000.00. Every day the violation continues shall constitute a separate and distinct offense.

Sec. 102-14. Liability insurance.

The owner of any building that has become vacant shall, within 30 days, acquire or otherwise maintain liability insurance, or a homeowner's insurance policy provided that such policy continues to cover third party liability, even if the insured building becomes vacant, in an amount of not less than \$300,000.00 for buildings designed primarily for use as residential units and not less than \$1,000,000.00 for any other building, including, but not limited to, buildings designed for manufacturing, industrial, storage or commercial uses, covering any damage to any person or any property caused by any physical condition of or in the building and maintain coverage until the building is no longer vacant. Any insurance policy acquired after the building has become vacant shall provide for written notice to the Department of Building and Zoning within 30 days of any lapse, cancellation or change in coverage. The owner and the owner's authorized agent for service of process shall provide evidence of insurance, upon initial registration and all subsequent registration renewals, to the Department of Building and Zoning.

Sec. 102-15. Fines and penalties.

Any owner who violates any provision of this ordinance or of the rules and regulations issued hereunder shall be fined not less than \$500.00 and not more than \$1,000.00 for each offense. Every day that a violation continues shall constitute a separate and distinct offense.

Sec. 102-16. Enforcement.

When a property is deemed in noncompliance with this ordinance the appropriate enforcing authority may through the State's Attorney initiate an abatement proceeding under this section in the Circuit Court or with the Department of Administrative Hearings.

Sec. 102-17. Proceedings before the Department of Administrative Hearings.

(a) Proceedings for administrative adjudication of alleged violations of this ordinance shall be conducted pursuant to the procedures set out in Chapter 2 Article IX of the Cook County Code of Ordinances, except in the event of a conflict between the procedures set out in Chapter 2 Article IX and the procedures set out in this section, the procedures set out in the section shall prevail.

(b) If an administrative law officer finds, by a preponderance of evidence, that the property is in noncompliance with this ordinance the administrative law officer shall assess fines and costs. After expiration of the period within which judicial review of the hearing officer's decision may be sought under the Illinois Administrative Review Law, the order assessing fines and costs decision, unless reversed or modified on judicial review, may be enforced in the same manner as a judgment entered by a court of competent jurisdiction. All expenses incurred to enforce the judgment, including, but not limited to, attorney's fees, court costs, and collection fees, shall be a debt due and owing the County and may be collected in accordance with applicable law.

(c) If an administrative law officer finds, by a preponderance of the evidence, that the property is in noncompliance with this ordinance the administrative law officer may enter an order of abatement which requires the owner to take all reasonable measures necessary to abate the noncompliance. If an order of abatement is entered, it shall be entered at the time of the entry of the order assessing fines and costs for violations which occurred prior to the entry of the order of abatement. The order assessing fines and costs shall not be final, until a final order is entered as to the abatement of the violations. Any owner who fails to comply with an administrative law officer's abatement order shall be subject to a fine not less than \$500.00 and not more than

\$1,000.00 for each offense. Each day that the violation occurs shall be considered a separate and distinct offense.

Sec. 102-18. Proceedings before the Circuit Court.

(a) The State's Attorney is authorized to bring an action in a court of competent jurisdiction to abate noncompliance described in this section. If the court finds that the county has established by a preponderance of the evidence that the property identified in the notice is noncompliant, the court shall enter an order of abatement which requires the owner to take all reasonable measures necessary to abate the noncompliance. The court's order of abatement may include, but is not limited to: correcting all code violations; altering, repairing or improving the building or structure; rendering the building or structure fit for human use or habitation; vacating or enclosing the building or structure; removing or demolishing the building or structure; or, if requested by the State's Attorney and reasonable in the light of the magnitude of the harm caused or which can reasonably be expected to be caused by noncompliance, the market value of the property in its current condition, and the extent to which the defendant has failed to take effective measures to abate the noncompliance, the forfeiture to the county of all the defendant's rights, title and interest in the property.

Sec. 102-19. Vacant buildings – Mortgagee required to act – Enforcement authority.

- (a) (1) The mortgagee of any residential building that has become vacant and which is not registered pursuant to this section or Section 102-5 of this Code shall, within the later of 30 days after the building becomes vacant and unregistered or 60 days after a default, file a registration statement with the Department of Building and Zoning on forms provided by that department for such purposes and pay a registration fee of \$250. The mortgagee shall be required to renew the registration every year as long as the building remains vacant. There shall be no fee for such renewal. The mortgagee shall notify the Department of Building and Zoning within 20 days of any change in the registration information by filing an amended registration statement on a form provided

by the Department of Building and Zoning for such purposes. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted under this section against the mortgagee with respect to the registered building. The base registration fee set forth above in this section shall be doubled if the applicable initial registration takes place not through voluntary and timely compliance, but as the result of an enforcing authority's identification of a violation of this ordinance. Such doubled fee shall not be subject to reduction, during the relevant period, for having registered or renewed following the issuance of a citation for failure to register or renew.

- (2) In addition to other information required by the Building and Zoning Commissioner, the registration statement shall include the name, street address and telephone number of a natural person, 21 years of age or older, or business entity registered with the Illinois Secretary of State designated by the mortgagee as an authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such mortgagee in connection with enforcement of this section. This person must maintain an office in Cook County, Illinois, or must actually reside within Cook County, Illinois. A mortgagee meeting these criteria may designate itself as agent. By designating an authorized agent under the provisions of this subsection a mortgagee consents to receive any and all notices of violations of this section concerning the registered building and all process in any court proceeding or administrative enforcement proceeding brought to enforce this section with respect to the registered building by service of the notice or process on the authorized agent. Any mortgagee who has designated an authorized agent under the provisions of this subsection shall be deemed to consent to the continuation of the agent's designation for the purposes of this subsection until the mortgagee notifies the Department of Building and Zoning of a change of authorized agent or until the mortgagee files a new registration statement. Any mortgagee who fails to register a vacant building under the provisions of this

section shall further be deemed to consent to receive, by posting at the building, any and all notices of code violations and all process in the administrative proceeding brought to enforce code provisions concerning the building. The enforcing authority shall notify the designated agent of all violations and enforcement proceedings brought under this section.

(b) The mortgagee of any residential building that has become vacant and which is not registered pursuant to Section 102-5, within the later of 30 days after the building becomes vacant and unregistered or 60 days after a default, shall:

- (1) secure the building's doors and windows so that all such building openings are closed and secured, using secure doors, windows without broken or cracked panes, commercial-quality metal security panels, filled with like-kind material as the surrounding wall, or boarded with plywood installed and secured in accordance with the rules and regulations issues by the Department of Building and Zoning or the appropriate enforcing authority;
- (2) secure the building so that at least one building entrance shall be accessible from the exterior and secured with a door that is locked to allow access only to authorized persons. If two or more exit doors exist, a minimum of two exit doors shall be available to exit from the interior of the building, with at least one exit door available per 150 linear feet of horizontal travel at ground-floor level;
- (3) maintain all grass and weeds on the residential real estate premises, below 10 inches in height and cut and remove all dead or broken trees, tree limbs or shrubbery;
- (4) clear or remove snow from the walkway leading to the main entry door, and any public sidewalk adjoining the lot;
- (5) abate the accumulation of debris, trash and litter that does not constitute personal

property on any portion of the exterior lot of the building;

- (6) reasonably maintain fences and gates;
- (7) reasonably maintain the structural integrity of stairs and steps that lead to the main entrance of the building;
- (8) winterize the building, which shall mean cleaning all toilets and completely draining all plumbing and heating systems;
- (9) maintain and secure the exterior of the building;
- (10) post a sign affixed to the building indicating: the vacant building registration number and the name, address and telephone number of the mortgagee and the mortgagee's authorized agent for the purpose of service of process. The name, address and telephone number of a person responsible for day-to-day supervision and management of the building, if such person is different from the mortgagee or authorized agent shall be indicated on the sign as well. The sign shall legible, be no smaller than 8.5 inches by 11 inches and placed in such a location so as to be visible from the nearest public street or sidewalk, whichever is nearer; and
- (11) maintain the building in a secure and closed condition and maintain the sign until the building is reoccupied or demolished with all permits required by the enforcing authority. If during the registration period and following the initial boarding and securing of the property in compliance with this section the enforcing authority notifies the mortgagee in writing that the property was found open or it has been judicially or administratively found to be open, in each case on two separate occasions at least 30 days apart then the building shall thereafter be secured with only commercial-quality metal security panels or a method deemed equivalent by the enforcing authority; and

(12) keep the exterior of the property free of vermin and rodents.

(c) Any person who violates any provision of this section or of the rules and regulations issued hereunder shall be fined not less than \$500.00 and not more than \$1,000.00 for each offense. Every day that a violation continues shall constitute a separate and distinct offense. The following shall be affirmative defenses under Section 102-19 and Section 102-20:

- (1) That the owner or another mortgagee has registered the building pursuant to Section 102-5 or Section 102-19 as applicable and such registration is current;
- (2) That the mortgagee is barred from doing any action required by this section by an automatic stay pursuant to a bankruptcy proceeding, provided that the mortgagee tenders evidence including the bankruptcy case number;
- (3) That the mortgagee has cured all violations within 30 days of receiving written notice of such violations. Notice sent by U.S. mail shall be deemed received seven days after mailing. An affidavit shall be conclusive proof of mailing;
- (4) That at the time of the violation, the mortgage was not in default;
- (5) That at the time of the violation, the mortgagee was not the senior lienholder of record on the real estate;
- (6) That a receiver has been appointed for the property by a court of competent jurisdiction;
- (7) That in a foreclosure of the property, the owner or mortgagor has taken any of the following acts within the past 60 days:
 - (i) filed any pleading which asserts claims against the mortgagee or defenses;

- (ii) filed any motion which asserts defenses or claims against the mortgagee;
- (iii) filed any discovery for response by the mortgagee; or
- (iv) filed a request for mediation.

(d) The Department of Building and Zoning may issue rules and regulations for the administration of this section.

(e) For the purposes of this section and Section 102-20, “vacant” shall mean any real estate improved with a complete structure containing one or more dwelling units or an incomplete structure if the real estate is zoned for residential development, where the structure is empty or otherwise uninhabited by persons and the structure or lot is in need of maintenance, repair or securing, and with respect to which one or more of the following conditions exist:

- (1) all lawful business or construction operations have ceased for 6 (six) months;
- (2) it has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by the enforcing authority or by an order issued by a court of competent jurisdiction;
- (3) no construction or legal repairs have commenced for 6 (six) months;
- (4) the doors or windows are smashed through, broken, unhinged, removed or continuously unlocked;
- (5) law enforcement officials have received at least one report of trespassers or vandalism or other illegal acts being committed at the property in the last 6 (six) months;
- (6) gas, electrical or water services to the entire premises have been terminated.

A property shall not be considered vacant if: (i) there is an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations and legislation; (ii) there is a building occupied on a seasonal basis, but otherwise secure; (iii) there is a secure building on which there are bona fide rental or sale signs; or (iv) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute; or (v) there is otherwise a building that is secure and in substantial compliance with all applicable ordinances.

(f) If a building is registered under paragraph (a) of this section, only the registered mortgagee shall be liable under this section during the registration period. Nothing in this section shall bar the concurrent enforcement of any provision of this ordinance against the owner or owners of a property.

(g) To the extent permitted by law, a mortgagee's acts or omissions required by this section shall not subject the mortgagee to civil or criminal liability unless the act or omission constitutes gross negligence or willful, wanton, or intentional misconduct pursuant to this ordinance. This provision shall not waive the requirement to obtain permits or licenses for performing certain work required under this section, or otherwise required by this ordinance, or the penalties provided for failure to do so.

102-20. Mortgagee to inspect real estate.

(a) For purposes of this section the terms "default," "mortgage," "mortgagee," "mortgagor," shall be defined as provided in Section 102-4.

(b) For the purposes of this section the term "vacant" shall be defined as provided in Section 102-19(e).

(c) Beginning 45 days after a default, a mortgagee shall determine, on a monthly

basis, if the building on the real estate subject to its mortgage is vacant. Such determination may be made by communication with the mortgagor, a visual inspection of the real estate, or other means reasonably calculated to determine if the building is vacant.

(d) This section shall not require a mortgagee to perform any action which it is barred from doing by an automatic stay pursuant to a bankruptcy proceeding.

(e) To the extent permitted by law, a mortgagee's acts or omissions required by this section shall not subject the mortgagee to civil or criminal liability unless the act or omission constitutes gross negligence or willful, wanton, or intentional misconduct.

Sec. 102-21. Termination.

(a) For purposes of this section the terms "mortgage," and "mortgagee," shall be defined as provided in Section 102-4.

(b) For the purposes of this section the term "vacant" shall be defined as provided in Section 102-19(e).

(c) Upon the occurrence of any of the following, the requirements of Sections 102-19 and 102-20 shall terminate with respect to a mortgagee:

(1) The filing with the Recorder of Deeds of a satisfaction or release of the mortgagee's mortgage;

(d) Upon the occurrence of any of the following, the requirements of Sections 102-19 and 102-20 shall terminate with respect to a building:

(1) The filing with the Recorder of Deeds of a conveyance of title to the underlying real estate, pursuant to foreclosure proceedings or otherwise;

- (2) The building ceases to be vacant; or
- (3) The building is demolished with all permits required by Cook County Building and Zoning and, where the property is located within a participating municipality, with all permits required by that municipality.

(e) Within 20 days of termination pursuant to this section, a mortgagee shall notify the Department of Building and Zoning on a form provided by the Department of Building and Zoning for such purpose.

Sec. 102-22. Improperly maintained buildings and structures subject to nuisance abatement proceedings.

(a) The following buildings and structures are hereby declared to be public nuisances subject to abatement proceedings under this section:

- (1) A building or structure found to be vacant and open after the effective date of an order to secure and enclose issued by a court of competent jurisdiction or the department of administrative hearings within the previous 12 months, unless stayed by a court of competent jurisdiction;
- (2) A building or structure that contains any violation of a health, fire, electrical, plumbing, building or zoning provision of this code which is imminently dangerous and hazardous;
- (3) A building or structure for which the costs of the repairs necessary to bring the building or structure into compliance with applicable laws would exceed the market value of the building or structure after the repairs would have been made, or when the owner cannot show that it has readily available and sufficient assets to make such repairs or where such repairs otherwise are economically infeasible; or

- (4) A building or structure where an owner has failed to correct the code violation(s) that form the basis of an adverse order or judgment involving that building or structure, issued by a court of competent jurisdiction or a hearing officer of the department of administrative hearings, within 60 days of entry, unless such adverse order or judgment has been stayed by a court of competent jurisdiction.

For purposes of this section “vacant” shall be defined as provided in Section 102-19(e) for a mortgagee, for the purposes of this section “vacant” shall be defined as provided in Section 102-5 for owners; and “open” refers to a building that has any door, window or wall missing or unsecured, or has any other opening so as to allow entry by a human being.

(b) The Office of the State’s Attorney is authorized to bring an action in a court of competent jurisdiction to abate a public nuisance described in this section. If the court finds that the County or participating municipality has established by a preponderance of the evidence that the building or structure identified in the notice is a public nuisance as described in this section, the court shall enter an order of abatement which requires the owner or owners of record, including beneficial owners of any Illinois land trust, within the time frame specified in the order, to take all reasonable measures necessary to abate the public nuisance. The court’s order of abatement may include, but is not limited to: correcting all code violations; altering, repairing or improving the building or structure, rendering the building or structure unfit for human use or habitation; vacating or enclosing the building or structure; removing or demolishing the building or structure. If requested by the State’s Attorney and reasonable in light of the magnitude of the harm caused or which can reasonably be expected to be caused by the nuisance, the market value of the property in its current condition, and the extent to which the defendant has failed to take effective measures to abate the nuisance, the Court may enter an order which provides for:

- (1) Forfeiture to the County or participating municipality of all of the defendant’s rights, title and interest in the real estate, or
- (2) Authorization to the first or senior mortgagee, as a receiver, to take possession of

the property and bring the property into compliance with the Cook County Vacant Building Ordinance.

(c) There shall be a rebuttable presumption that the issuance of an order of forfeiture of all of the defendant's rights, title and interest in the real estate or the issuance of an order authorizing the first or senior mortgagee to take possession of the property and to bring the property into compliance with the Cook County Vacant Building Ordinance shall be appropriate for any property that is determined to be a nuisance under subparagraphs (a)(1), (a)(2), or (a)(4) of this section. Whenever such an order of forfeiture authorization is issued under this section with respect to a vacant building or a building containing four or fewer residential units, the holder of the first or senior mortgage or lien on the property, disregarding any more senior mortgages or liens held by a unit of government, shall, beginning 60 days after the date the order is issued, be liable for any code violations on the property on and after that date, unless the holder has waived its rights under the mortgage or lien; provided that the 60 day period after which liability attaches may be extended by an administrative law officer or court upon a showing that the mortgage or lienholder has exercised reasonable diligence in abating the nuisance and that additional time is needed to complete the abatement. The holder of such a mortgage or lien shall have the right to take possession of the property in order to effect necessary repairs beginning on the date that an order of forfeiture issues. In any case in which an order of forfeiture is sought for property involving a vacant building or a building containing four or fewer residential units, the holder of any first or senior mortgage or lien, disregarding any more senior mortgage or lien held by a unit of government, shall be given notice and an opportunity to intervene as a party.

(d) For any building or structure that is a public nuisance subject to abatement proceedings under this section, the owner, the owner's agent for purposes of managing or controlling or collecting rents on the building or structure, the holder of a mortgage or lien with a right to possession of the building or structure under subsection (d) of this section, and any other person or mortgagee managing or controlling the building or structure shall be fined not less than \$500.00 nor more than \$1,000.00 for each day the nuisance has existed until the nuisance is abated. The amount of any fine imposed under this section or under the Cook County Vacant

Building Ordinance in any proceeding involving a building or structure that is a public nuisance under this section, the cost of the repairs, alterations, improvements, or vacating and enclosing, or removal and demolition by the enforcing authority, and the costs of bringing the abatement proceeding under this section into compliance, including inspector's and attorney's fees, shall be recoverable from the owner or owners and shall be a lien on the property upon which the building or structure is or was located and shall also be enforceable against any person or mortgagee against whom the order issues as provided by law. Any lien created under this section may, upon a showing of good cause, be waived by the Office of the State's Attorney. The lien for the costs of repairs, alterations, improvements, demolition, receivership, vacating or enclosing shall be a first lien upon the real estate and the rents and issues thereof, and shall be superior to all prior assignments of rents and all prior existing liens and encumbrances, except taxes, and shall be enforced pursuant to applicable law. No license shall be issued relating to the property subject to such lien until the lien is satisfied or, upon a showing of good cause, the lien is waived by the Office of the State's Attorney. Nothing in this section shall prevent the County or participating municipality from seeking other remedies for code violations through the use of any other administrative procedure or court proceeding, including the imposition of fines set forth for violations of the Cook County Vacant Building Ordinance.

(e) Any property forfeited to the County under this section may be disposed of as authorized by the County Board.

(f) All fees and fines laid out in this section are in addition to any fees and fines in the Cook County Building and Zoning Ordinance.

102-23. Demolition of open, hazardous residential and commercial buildings.

(a) If a residential building has been determined by the appropriate enforcing authority pursuant to Section 102-22 (b) to be open and vacant and an immediate and continuing hazard to the community in which the building is located, then the Commissioner of the Department of Building and Zoning shall be authorized to post a notice of not less than two feet by two feet in size on the front of the building. The notice shall be dated as of the date of the posting and shall

state that unless the building is demolished, repaired, or enclosed, and unless any garbage, debris, and other hazardous, noxious, or unhealthy substances or materials are removed so that an immediate and continuing hazard to the community no longer exists, then the building may be demolished, repaired, or enclosed, or any garbage, debris, and other hazardous, noxious, or unhealthy substances or materials may be removed, by the enforcing authority. Not later than 30 days following the posting of the notice, the Department of Building and Zoning shall do the following:

- (1) Cause to be sent, by certified mail, return receipt requested, a notice to all owners of record of the property, the beneficial owners of any Illinois land trust having title to the property, and all lien holders of record in the property, stating the intent of the Department of Building and Zoning to demolish, repair, or enclose the building, or remove any garbage, debris, or other hazardous, noxious, or unhealthy substances or materials if that action is not taken by the owner or owners or lien holders of record.
- (2) Cause to be published, in a newspaper published in the municipality, a notice setting forth:
 - (i) the address of the building or description of the real estate sufficient for its identification,
 - (ii) a statement that the property is open and vacant and constitutes an immediate and continuing hazard to the community, and
 - (iii) a statement that the Department of Building and Zoning intends to demolish, repair, or enclose the building, or remove any garbage, debris, or other hazardous, noxious, or unhealthy substances or materials if the owner or owners or lien holders of record fail to do so. This notice shall be published for three consecutive days.

(3) Cause to be filed in the office of the recorder of deeds and registrar of titles, a notice setting forth (i) the address of the building or a description of the real estate sufficient for its identification; and (ii) a statement that the Department of Building and Zoning has initiated an action under Section 102-23 to cause the demolition, repair or enclosure of the building or the removal of garbage, debris or other hazardous, noxious, or unhealthy substances or materials located on the property if the owner or owners or lien holders of record fail to do so. If the building is not demolished, repaired, or enclosed, or the garbage, debris, or other hazardous, noxious, or unhealthy substances or materials are not removed, within 30 days of mailing the notice described in subsection (a)(1) of this section or within 30 days of the last day of publication of the notice, whichever is later, the Department of Building and Zoning shall cause to be sent, by mail, a final determination to the owners of record, the beneficial owners of any Illinois land trust having title to the property, and all lien holders of record in the property, which provides notice that the Department of Building and Zoning has determined that the necessary demolition, repair, enclosure or removal action has not been taken and that the building remains open and vacant and an immediate and continuing hazard to the community in which the building is located. The final determination shall include a statement that, unless a hearing is sought under this chapter before a court of competent jurisdiction to object to the proposed actions of the Department of Building and Zoning and a copy of the complaint served on the Cook County Board President within ten days of the mailing of the final determination, the Department of Building and Zoning intends to exercise its power to demolish, repair, or enclose the buildings, or to remove any garbage, debris, or other hazardous, noxious, or unhealthy substances or materials.

The Department of Building and Zoning may proceed to demolish, repair, or enclose a building or remove any garbage, debris, or other hazardous, noxious or unhealthy substances or materials under this subsection within a 120 day period following the date of the mailing of the notice described in subsection (a)(1) of this section if the Commissioner of the Department of Building and Zoning determines that the demolition, repair, enclosure, or removal of any garbage, debris, or other hazardous, noxious, or unhealthy substances or materials is necessary to remedy the immediate and continuing hazard. "If, however, before the Commissioner of the Department of Building and Zoning proceeds with any of the actions authorized by this chapter,

any person or mortgagee who has sought a hearing under this chapter before a court and has served a copy of the complaint on the Cook County Board President, then the County shall not proceed with the demolition, repair, enclosure, or removal of garbage, debris, or other substances until the court determines that action is necessary to remedy the hazard and issues an order authorizing the enforcing authority to do so.

Following the demolition, repair, or enclosure of a building, or removal of garbage, debris, or other hazardous, noxious, or unhealthy substances or materials under this subsection, the County may file a notice of lien against the real estate for the cost of the demolition, repair, enclosure, or removal within 180 days after the repair, demolition, enclosure, or removal occurred, for the cost and expense incurred, in the office of the recorder of deeds and registrar of titles. The notice of lien shall consist of a sworn statement setting forth (i) a description of the real estate, such as the address or other description of the property, sufficient for its identification; (ii) the expenses incurred by the enforcing authority in undertaking the remedial actions authorized by this chapter; (iii) the date or dates that the expenses were incurred by the Commissioner of the Department of Building and Zoning or his designee; (iv) a statement by the Commissioner of the Department of Building and Zoning that the building was open and vacant and constituted an immediate and continuing hazard to the community; (v) a statement by the Commissioner of the Department of Building and Zoning that the required sign was posted on the building, that notice was sent by certified mail to the owners of record, and that notice was published in accordance with this subsection; and (vi) a statement as to when and where the notice was published. The lien authorized by this chapter may thereafter be released or enforced by the County as provided in in 55 ILCS Division 5-41 or by a participating municipality as provided by 65 ILCS 5/11-31-1(c), previously codified as Illinois Revised Statutes, Ch. 24, Par. 11-31-1(c) and Section 2-901 *et. seq.* of the Cook County, Illinois Code of Ordinances.

Sec. 102-24. Notice requirement of Section 5.4-3c.(2).

The notice requirement set out in Section 5.4-3c.(2) of the Cook County Building Ordinance shall not apply to the provisions in the Cook County Vacant Building Ordinance.

Sec. 102-25. Municipality Outreach and Enforcement.

The Bureau of Economic Development shall engage in outreach and planning functions with Municipalities to determine participation interest. Municipalities interested in enforcing the Cook County Vacant Building Ordinance shall seek to enter into an intergovernmental agreement with Cook County to enforce the Cook County Vacant Building Ordinance within the boundaries of that municipality.

Effective date: This ordinance shall be in effect sixty (60) days after adoption.