

ORDINANCE NO. 20-2015

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF ABERDEEN,  
CHAPTER XII ENTITLED "BUILDINGS, CONSTRUCTION AND HOUSING" TO  
ADD A NEW SECTION 12-7 ENTITLED "VACANT ABANDONED PROPERTIES"

**WHEREAS**, pursuant to the Abandoned Property Rehabilitation Act (N.J.S.A. 55:19-78 et seq.), the Mayor and Council of the Township of Aberdeen has the power to establish an Abandoned Property List and to establish and adopt specific municipal powers that are authorized to municipalities under the New Jersey Abandoned Property and Rehabilitation Act, N.J.S.A. 55:19-78 et seq., (the "Act").

**WHEREAS**, the Mayor and Council of the Township of Aberdeen ("Township"), strongly agree with the Act that abandoned properties create a wide range of problems for municipalities, including but not limited to, the fostering of criminal activity, creating public health problems and otherwise diminishing the quality of life for residents and business operators in those areas; and

**WHEREAS**, the Mayor and Council of the Township strongly agree with the Act that abandoned properties diminish the property values of neighboring properties and have a negative effect on the quality of life of adjacent property owners, increasing the risk of property damage through arson and vandalism and discouraging neighborhood stability and revitalization; and

**WHEREAS**, the Mayor and Council of the Township strongly agree with the Act that, based upon the above, abandoned properties are presumptively considered nuisances in view of their negative effects on nearby properties and the residents or users of those nearby properties; and

**WHEREAS**, the Mayor and Council of the Township strongly agree with the Act that the continued presence of abandoned properties in the Township of Aberdeen acts as a significant barrier to the Township's continued development and revitalization; and

**WHEREAS**, the Mayor and Council of the Township strongly agree with the Act that it is the responsibility of the property owner to maintain his/her property in sound condition and prevent it from becoming a nuisance, that this responsibility extends to properties which are not in use, and failure of a property owner to comply with legitimate orders to pay his/her property taxes, demolish, stabilize or otherwise repair his or her property after due notice and the passage of the requisite

time period, creates a presumption that the owner has abandoned the property,

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Township of Aberdeen that the Code of the Township of Aberdeen is hereby amended to establish and adopt the municipal powers authorized by the Act, N.J.S.A. 55:19-78 et seq., and related statutory provisions, by adopting new section 12.7 entitled "Vacant Abandoned Properties" as follows:

**§12-7.1. DEFINITIONS.**

As used in this chapter, the following terms shall have the meanings indicated:

**ABANDONED PROPERTY**

Any property that is determined to be abandoned pursuant to N.J.S.A. 55:19-78 et al.

**ABANDONED PROPERTY LIST**

An inventory list of Abandoned Property, created pursuant to N.J.S.A. 55:19-55.

**DEPARTMENT**

The New Jersey Department of Community Affairs.

**INTERESTED PARTY**

Any resident of the Township of Aberdeen, any owner or operator of a business within the Township of Aberdeen, or any organization representing the interests of residents, business owners or otherwise engaged in furthering the revitalization and improvement of the neighborhood in which the property is located.

**LIEN HOLDER or MORTGAGE HOLDER**

Any person or entity holding a note, mortgage or other interest secured by the building or any part thereof.

**OWNER**

The holder or holders of title to an Abandoned Property.

**PROPERTY**

Any building or structure and the land appurtenant thereto.

**PROPERTY IN NEED OF REHABILITATION**

Improved, legally vacant property in a state of disrepair as set forth in N.J.S.A. 40A:12A-3 or 14, except that it need not be in an area in need of rehabilitation.

**PUBLIC OFFICER**

A person designated or appointed by the municipal governing body pursuant to N.J.S.A. 40:48-2.5, or any officer of the Township qualified to carry out the responsibilities set forth in N.J.S.A. 55:19-78 et al., or the Construction Code Official or his/her designee.

**QUALIFIED REHABILITATION ENTITY**

An entity organized or authorized to do business under the New Jersey statutes which shall have as one of its purposes the construction or rehabilitation of residential or non-residential buildings, the provision of affordable housing, the restoration of abandoned property, the revitalization and improvement of urban neighborhoods, or similar purpose, and which shall be well qualified by virtue of its staff, professional consultants, financial resources, and prior activities set forth in the Act to carry out the rehabilitation of vacant buildings in urban areas.

All undefined terms in this ordinance are given the definition set forth in the Act or otherwise at law.

**§12-7.2. ABANDONED PROPERTY CRITERIA.**

**A.** Except as provided in N.J.S.A. 55:19-83, any improved vacant property that has not been legally occupied for a period of six (6) months and which meets any one of the following additional criteria may be deemed to be Abandoned Property upon a determination by the Public Officer that:

(1) The property is a Property In Need of Rehabilitation in the reasonable judgment of the Public Officer and no rehabilitation has taken place during that same six (6) month period; or

(2) Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least six (6) months as of the date of a determination by the Public Officer pursuant to this section; or

(3) At least one installment of property tax remains unpaid and delinquent on that property as of the date of a determination by the Public Officer pursuant to this section; or

(4) The property has been determined to be a nuisance by the Public Officer in accordance with N.J.S.A. 55:19-82 for one or more of the following reasons:

(a) The Property has been found to be unfit for human habitation, occupancy or use pursuant to N.J.S.A. 40:48-2.3;

(b) The condition and vacancy of the Property materially increases the risk of fire to the Property and adjacent properties;

(c) The Property is subject to unauthorized entry leading to potential health and safety hazards; the Owner has failed to take reasonable and necessary measures to secure the property; or the Township has

secured the property in order to prevent such hazards after the Owner has failed to do so;

(d) The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds have created potential health and safety hazards and the Owner has failed to take reasonable and necessary measures to remove the hazards; or

(e) The dilapidated appearance or other condition of the Property materially affects the welfare, including the economic welfare, of the residents of the area in close proximity to the Property, and the Owner has failed to take reasonable and necessary measures to remedy the conditions.

(5) The Public Officer must comply with the notice provisions of N.J.S.A. 40:48-2.3 et seq., after making the determination that the Property is a nuisance.

B. A Property which contains both residential and non-residential space may be considered abandoned pursuant to N.J.S.A. 55:19-78 et seq. so long as two-thirds or more of the total net square footage of the building was previously legally occupied as residential space and none of the residential space has been legally occupied for at least six (6) months at the time of the determination of abandonment by the Public Officer and the property meets the criteria of Subparagraph (1) or (4) of Paragraph "A." of this Section.

**§12-7.3. PROPERTY DEEMED NOT ABANDONED, CRITERIA.**

A. If an entity other than the Township has purchased or taken assignment from the Township of a tax sale certificate on a Property that has not been legally occupied for a period of six (6) months, that Property will not be placed on the Abandoned Property List pursuant to N.J.S.A. 55:19-55 if, as set forth in N.J.S.A. 55:19-83:

(1) The Owner of the tax sale certificate has continued to pay all municipal taxes and liens on the Property in the tax year when due; **and**

(2) The Owner of the tax sale certificate has initiated foreclosure proceedings within six (6) months of the date the property is eligible for foreclosure, pursuant to either subsection a. or subsection b. of N.J.S.A. 54:5-86, and diligently pursues foreclosure proceedings in a timely fashion thereafter.

B. If the Property is used on a seasonal basis, it shall be considered abandoned only if it meets two (2) of the four (4) criteria set forth in Section II.A.(1) through (4).

C. A determination that a Property is abandoned property under the provisions N.J.S.A. 55:19-78 et al., shall not constitute a

finding that the use of the Property has been abandoned for purposes of municipal zoning or land use regulation.

D. Upon the request of a purchaser or assignee of a tax sale certificate seeking to bar the right of redemption on an Abandoned Property pursuant to N.J.S.A. 54:5-86(b.), the Public Officer or the Tax Collector shall, in a timely fashion, provide the requester with a certification that the property fulfills the definition of abandoned according to the criteria set forth in Sections 4 and 5 of P.L. 2003, c. 210 (N.J.S.A. 55:19-81 and N.J.S.A. 55:19-82).

**§12-7.4. ESTABLISHMENT OF ABANDONED PROPERTY LIST.**

A. The Township hereby directs the Public Officer to identify Abandoned Property and to establish an Abandoned Property List throughout the Township or within those parts of the Township as the Governing Body may, from time to time, designate. The Abandoned Property List shall include, for each Abandoned Property identified, the tax block and lot number, the name of the owner of record, if known, and the street address of the lot. The Township, by resolution, may add properties to the Abandoned Property List at any time.

B. An Interested Party may request that a property be included on the Abandoned Property List following that procedure set forth in N.J.S.A. 55:19-105.

C. Abandoned Property shall not be included on the Abandoned Property List if rehabilitation is being performed in a timely manner, as evidenced by building permits issued and diligent pursuit of rehabilitation work authorized by those permits.

D. A property on which an entity other than the Township of Aberdeen has purchased or taken assignment from the Township of a tax sale certificate which has been placed on the Abandoned Property List may be removed in accordance with the provisions of Section 29 of N.J.S.A. 55:19-103.

E. The Public Officer shall establish the Abandoned Property List or any additions thereto by publication in the official newspaper of the Township, which publication shall constitute public notice, and, within ten (10) days after publication, shall send a notice by certified mail, return receipt requested, and by regular mail to the owner of record of every property included on the list. The published and mailed notices shall identify property determined to be abandoned, setting forth the owner of record, if known, the tax lot and block number and street address. The Public Officer, in consultation with the Tax Collector, shall also send out a notice by regular mail to any mortgagee, servicing organization, or property tax processing organization that receives a duplicate copy of the tax bill pursuant to N.J.S.A. 54:4-64(d). When the owner of record is not known for a particular property and cannot be

ascertained by the exercise of reasonable diligence by the Tax Collector, notice shall not be mailed but instead shall be posted on the property in the manner as provided in N.J.S.A. 40:48-2.7. The mailed notice shall indicate the factual basis for the Public Officer's finding that the property is Abandoned Property as that term is defined in N.J.S.A. 55:19-54, and shall specify the information relied upon in making such finding. In all cases a copy of the mailed or posted notice shall also be filed by the Public Officer in the office of the Monmouth County Clerk. This filing shall have the same force and effect as a notice of *lis pendens* under N.J.S.A. 2A:15-6. The notice shall be indexed by the name of the Property Owner as defendant and the name of the Township as plaintiff, as though an action had been commenced by the Township against the Owner.

**F.** The Public Officer, within ten days of establishment of the Abandoned Property List, or any additions thereto, shall send, by regular mail, facsimile, or electronic mail, a copy of the Abandoned Property List to the Electric and Gas Utilities serving the Township.

**G.** An Owner or Lien Holder may challenge the inclusion of his property on the Abandoned Property List by appealing that determination to the Public Officer within thirty (30) days of the Owner's receipt of the certified notice or forty (40) days from the date upon which the notice was sent. An Owner whose identity was not known to the Public Officer shall have forty (40) days from the date upon which notice was published or posted, whichever is later, to challenge the inclusion of a property on the Abandoned Property List. For good cause shown, the public officer shall accept a late filing of an appeal.

**H.** Within thirty (30) days of receipt of a request for an appeal of the findings contained in the notice pursuant to Paragraphs E. and F. of this Section, the Public Officer shall schedule a hearing for redetermination of the matter. Any property included on the list shall be presumed to be Abandoned Property unless the Owner, through the submission of an affidavit or certification by the property Owner averring that the property is not abandoned and stating the reasons for such averment, can demonstrate that the property was erroneously included on the list. The affidavit or certification shall be accompanied by supporting documentation, such as but not limited to photographs, and repair invoices, bills and construction contracts. The sole ground for appeal shall be that the property in question is not Abandoned Property as that term is defined in N.J.S.A. 55:19-54. The Public Officer shall decide any timely filed appeal within ten (10) days of the hearing on the appeal and shall promptly, by certified mail, return receipt

requested, and by regular mail, notify the Property Owner of the decision and the reasons therefore.

**I.** The Property Owner may challenge an adverse determination as the result of an appeal with the Public Officer pursuant to Paragraphs G. and H. of this section, by instituting, in accordance with the New Jersey Court Rules, a summary proceeding in the Superior Court, Law Division, Monmouth County, which action shall be tried de-novo. Such action shall be instituted within 20 days of the date of the notice of decision mailed by the Public Officer pursuant to Subsection 'H' of this section. The sole ground for appeal shall be that the Property in question is not Abandoned Property as that term is defined in N.J.S.A. 55:19-54. The failure to institute an action of appeal on a timely basis shall constitute a jurisdictional bar to challenging the adverse determination, except that, for good cause shown, the court may extend the deadline for instituting the action. The Public Officer shall promptly remove any property from the Abandoned Property List that has been determined not to be abandoned on appeal.

**J.** The Abandoned Property List shall become effective, and the Township shall have the right to pursue any legal remedy with respect to properties on the Abandoned Property List at such time as any one Property has been placed on the list in accordance with the provisions of this section, upon the expiration of the period for appeal with respect to that Property or upon the denial of an appeal brought by the Property Owner.

**K.** Any Interested Party may submit a written request to the Public Officer asserting that any property within the Township of Aberdeen should be included on the Abandoned Property List. The written request must specify the street address and block and lot number of the property to be included, and the grounds for its inclusion. Within thirty (30) days of receipt of any such request, the Public Officer shall provide a written response to the party, either indicating that the property will be added to the List or, if not, the reasons for not adding the property.

**L.** Any Interested Party may participate in a redetermination hearing regarding the inclusion of a property on the Abandoned Property List. Upon written request by any interested party, the Public Officer shall provide that party with at least twenty (20) days notice of any such hearing. The party shall provide the Public Officer with notice at least ten (10) days before the hearing of its intention to participate, and the nature of the testimony or other information that is proposes to submit at the hearing.

**§12-7.5. REMOVAL OF PROPERTY FROM THE ABANDONED PROPERTY LIST.**

**A.** Upon a finding and recommendation by the Public Officer, the Township, *sua sponte*, may delete properties at any time, when the Public Officer finds and recommends that the property no longer meets the definition of an Abandoned Property.

**B.** An Owner may request removal of their Property from the Abandoned Property List prior to sale of the tax sale certificate, in accordance with N.J.S.A. 55:19-57, by paying all taxes and Township liens due, including interest and penalties, and:

(1) by posting cash or a bond equal to the cost of remediating all conditions because of which the Property has been determined to be abandoned pursuant to N.J.S.A. 55:19-55 and by posting cash or a bond to cover the cost of any environmental cleanup required on the property, evidenced by a certification by a licensed engineer retained by the Owner and reviewed and approved by the Public Officer, stating that the cash or bond adequately covers the cost of the cleanup; or

(2) by demonstrating to the satisfaction of both the Public Officer and the Governing Body that the conditions rendering the Property abandoned have been remediated in full; provided, however, that where the Public Officer finds that the Owner is actively engaged in remediating the conditions because of which the Property was determined to be abandoned, as evidenced by significant rehabilitation activity on the Property, the Public Officer may grant an extension of time of not more than 120 days for the Owner to complete all work, during which time no further proceedings will be taken against the Owner or the Property.

**C.** If the Owner has posted cash or a bond in order to have a Property removed from the Abandoned Property List and the conditions because of which the Property was determined to be abandoned have not been fully remediated within one (1) year of the date of posting the cash or bond, or, in the case of a Property which requires a remediation of any known, suspected or threatened release of contaminants, if the Owner has failed to enter into a memorandum of agreement with the N.J. Department of Environmental Protection or an administrative consent order, as the case may be, or if an agreement or order is in effect but the Owner has failed to perform the remediation in conformance with the agreement or order, then the cash or bond shall be forfeited to the Township which shall use the cash or bond and any interest which has accrued thereon for the purpose of demolishing or rehabilitating the Property or performing the environmental remediation. Any funds remaining after the

Property has been demolished, rehabilitated or cleaned up shall be returned to the Owner.

**§12-7.6. SALE OF TAX LIENS ON ABANDONED PROPERTY/REMEDIATION.**

**A. Sale**

(1) Notwithstanding the provisions of N.J.S.A. 54:5-19, or the provisions of any other law to the contrary, if a Property is included on the Abandoned Property List and the property taxes or other Township liens due on the Property are delinquent for 6 or more quarters as of the date of expiration of the right to appeal the Property's inclusion on the Abandoned Property List, or, if an appeal has been filed, as of the date that all opportunities for appeal of inclusion on the Abandoned Property List have been exhausted, then the tax lien on the Property may be sold in accordance with the procedures of the "Tax Sale Law," N.J.S.A 54:5-1 et seq., on or after the 90th day following the expiration of that time of appeal or final determination on an appeal.

(2) The Township may, at its option, require that the sale of the tax sale certificate or any subsequent assignment or transfer of a tax sale certificate held by the Township be subject to the express condition that the purchaser or assignee shall be obliged to perform and conclude any rehabilitation or repairs necessary to remove the property from the Abandoned Property List pursuant to N.J.S.A. 55:19-55 and to post a bond in favor of the Township to guarantee the rehabilitation or repair of the Property. The Public Officer may waive a requirement to post a bond imposed by the Township for any purchaser, assignee or transferee of a tax sale certificate that provides documentation acceptable to the Public Officer that the purchaser, assignee or transferee is a Qualified Rehabilitation Entity, as defined infra in Section I. The cost of rehabilitation and repairs and the cost of the bond shall be added to the amount required to be paid by the Owner for redemption of the Property. The purchaser, assignee or transferee of the tax sale certificate who is required to rehabilitate and repair the Property shall be required to file the appropriate affidavits with the tax collector, pursuant to N.J.S.A. 54:5-62, representing the amounts of monies expended periodically toward the rehabilitation or repair of the Property. A purchaser, assignee or transferee shall be entitled to interest on the amounts expended, as set forth in the affidavits, at the delinquent rate of interest for delinquencies in excess of \$1,500 in effect for the time period when the amounts were expended, pursuant to N.J.S.A. 54:4-67. The tax sale

certificate purchaser, assignee or transferee, with the authority of the Township, shall be permitted to enter in and upon the Property for the purposes of appraising the costs of rehabilitation and repair and to perform all other acts required to guarantee the completion of the rehabilitation or repair of the Property. No rehabilitation or repair work shall be commenced, however, until proof of adequate liability insurance and an indemnification agreement, holding the Township of Aberdeen harmless, has been filed with the Public Officer.

**B. Remediation.**

(1) If the Township acquires the tax sale certificate for a Property on the Abandoned Property List, then, upon ten (10) days written notice to the Property Owner and any mortgagee as of the date of the filing of the notice pursuant to N.J.S.A. 55:19-55, the Township shall be permitted to enter upon the Property and remediate any conditions that caused the Property to be included on the Abandoned Property List. No remediation shall be commenced, however, if within that 10-day period the Owner or mortgagee shall have notified the Township in writing that the Owner or Mortgagee has elected to perform the remediation itself. When the Owner or Mortgagee elects to perform the remediation itself, it shall be required to post bond in favor of the Township of Aberdeen in order to ensure performance. The amount and conditions of the bond shall be determined by the Public Officer.

(2) The cost of remediation incurred by the Township, as so certified by the entity incurring the cost upon completion of the remediation, shall constitute a lien upon the property first in time and right to any other lien, whether the other lien was filed prior to, or after the filing of any lien by the Township, except for Township taxes, liens and assessments and any lien imposed pursuant to the "Spill Compensation and Control Act," N.J.S.A. 58:10-23.11 et seq., together with any interest thereon. The certification of cost shall be filed and recorded as a lien by the entity incurring the cost with the Monmouth County Clerk.

(3) Failure of an Owner or Lien Holder to cause the removal of a Property from the Abandoned Property List within the period of time for appeal of inclusion of the property on the list pursuant to N.J.S.A. 55:19-55, shall be prima facie evidence of the intent of the Owner to continue to maintain the Property as Abandoned Property.

**C.** The clearance, development, redevelopment, or repair of Property being maintained as an Abandoned Property pursuant to this Ordinance is considered a public purpose and public use,

for which the power of eminent domain may be lawfully exercised. N.J.S.A. 55:19-56(c) (2).

**§12-7.7. ACQUISITION OF TAX SALE CERTIFICATE; ACTION TO FORECLOSE RIGHT OF REDEMPTION.**

**A.** When a person other than the Township acquires a tax sale certificate for a Property on the Abandoned Property List at tax sale, the purchaser may institute an action to foreclose the right of redemption at any time after the expiration of six months following the date of the sale of the tax sale certificate, in accordance with N.J.S.A. 55:19-58.

**B.** When the Township is the purchaser at tax sale of any Property on the Abandoned Property List pursuant to N.J.S.A. 54:5-34, an action to foreclose the right of redemption may be instituted in accordance with the provisions of subsection b. of N.J.S.A. 54:5-77.

**C.** After the foreclosure action is instituted, the right to redeem shall exist and continue to exist until barred by the judgment of the Superior Court; provided, however, that no redemption shall be permitted except where the Owner:

(1) Posts cash or a bond equal to the cost of remediating the conditions because of which the Property was determined to be abandoned pursuant to N.J.S.A. 55:19-56, as determined by the court; or

(2) Demonstrates to the court that the conditions because of which the Property was determined to be abandoned pursuant to N.J.S.A. 55:19-56 have been remedied in full.

**D.** Once a final judgment barring the right of redemption with respect to a property on the list of abandoned properties has been recorded, no court shall reopen such judgment at any time except on the grounds of lack of jurisdiction or fraud in the conduct of the action; in any such proceeding, the provisions of N.J.S.A. 55:19-20 et al. shall be construed liberally in favor of the purchaser, assignee or transferee of the tax sale certificate.

**§12-7.8. SPECIAL TAX SALE AND CRITERIA FOR BIDDERS.**

**A.** The Township Tax Collector may hold a special tax sale with respect to those Properties eligible for tax sale pursuant to N.J.S.A. 54:5-19 which are also on the Abandoned Property List.

**B.** The Public Officer, with the advice and consent of the Mayor and Council of the Township, shall establish criteria for eligibility to bid on Properties at the sale, which may include, but need not be limited to:

(1) documentation of the bidder's ability to rehabilitate or otherwise reuse the Property consistent with Township's plans and regulations; commitments by the bidder to rehabilitate or otherwise reuse the Property, consistent with Township's plans and regulations;

(2) commitments by the bidder to take action to foreclose on the tax lien by a date certain; and

(3) such other criteria as the Public Officer, with the advice and consent of the Mayor and Council of the Township, may determine are necessary to ensure that the Properties to be sold will be rehabilitated or otherwise reused in a manner consistent with the public interest.

**C.** The Public Officer, with the advice and consent of the Mayor and Council of the Township, may establish minimum bid requirements for a special tax sale that are less than the full amount of the taxes, interest and penalties due, to help ensure that the Properties will be rehabilitated or otherwise utilized in a manner consistent with the public interest.

**D.** The Public Officer, with the advice and consent of the Mayor and Council of the Township, may combine Properties in said special tax sale into bid packages, and require that bidders place a single bid on each package, rejecting any and all bids on individual Properties that are submitted.

**E.** The Public Officer, with the advice and consent of the Mayor and Council of the Township, may sell said Properties subject to provision that, if the purchaser fails to carry out any commitment that has been set forth as a condition of sale or misrepresents any material qualification that has been established as a condition of eligibility to bid pursuant thereto, then the Properties and any interest thereto acquired by the purchaser shall revert to the Township, and any amount paid by the purchaser at the special tax sale shall be forfeited to the Township.

**F.** In the event there are two (2) or more qualified bidders for any Property or bid package in a special tax sale, the Township may designate the unsuccessful qualified bidder whose bid was closest to the successful bid, as an eligible purchaser. In the event that the selected purchaser of that Property or bid package fails to meet any of the conditions of sale established by the Township pursuant and their interest in the Property or Properties reverts to the Township, the Township may subsequently designate the entity previously designated as an eligible purchaser as the winning bidder for the Property or Properties, and assign the tax sale certificates to that entity on the basis of that entity's bid at the special tax sale, subject to the terms and conditions of the special tax sale.

**G.** The Township of Aberdeen shall provide notice of a special tax sale pursuant to N.J.S.A. 54:5-26. The notice shall include any special terms of sale established by the Township pursuant to this section. Nothing shall prohibit the Township from holding a special tax sale on the same day as a standard or accelerated tax sale.

**§12-7.9. EMINENT DOMAIN PROCEEDINGS AND VALUATION.**

With respect to any eminent domain proceedings carried out under N.J.S.A. 55:19-56, the fair market value of the Property will be established on the basis set forth in N.J.S.A. 55:19-102.

**§12-7.10. ACTION FOR CONTROL AND POSSESSION OF ABANDONED PROPERTY.**

**A. Transfer of possession and control.**

(1) A summary action or other action to transfer possession and control of abandoned property in need of rehabilitation to the Township may be brought by the Township in the Superior Court, Monmouth County, pursuant to N.J.S.A. 55:19-84, 85, and 86, for the relief set forth in those statutes.

(2) Where the Township has been granted possession and control, the Township may commence and maintain those further proceedings for the conservation, protection or disposal of the property, or any part thereof, that are required to rehabilitate the property, recoup the cost and expenses of rehabilitation, and for the sale of the Property.

(3) Failure by the Owner, Mortgage Holder or Lien Holder to submit a plan for rehabilitation to the Township, obtain appropriate construction permits or, in the alternative, submit formal applications for funding the cost of rehabilitation to Local, State or Federal agencies providing such funding within the initial six (6) month period, shall be deemed clear evidence that the Owner has failed to take any action to further the rehabilitation of the Property (N.J.S.A. 55:19-84).

**B.** A complaint filed pursuant to N.J.S.A. 55:19-84 shall include:

(1) Documentation that the Property is on the Abandoned Property List or a certification by the Public Officer that the Property is abandoned; and

(2) A statement by an individual holding appropriate professional qualifications that there are sound reasons that the building should be rehabilitated rather than demolished based upon the physical, aesthetic or historical character of the building or the relationship of the building to other buildings and lands within its immediate vicinity.

**C. Notice requirements for complaint (N.J.S.A. 55:19-86).**

(1) Within 10 days of filing a complaint pursuant to N.J.S.A. 55:19-78 et al., the plaintiff must file a notice of *lis pendens* with the Monmouth County Clerk.

(2) At least 30 days before filing the complaint, the Township shall serve a notice of its intention to take possession of an abandoned building. The notice must inform the Owner and Interested Party that the Property has not been legally occupied for six (6) months and also advise of those criteria that led to a determination of abandonment pursuant to N.J.S.A. 55:19-81.

(3) The notice will additionally provide that unless the Owner or an Interested Party prepares and submits a rehabilitation plan to the appropriate Township officials, the Township will seek to gain possession of the building to rehabilitate the Property and the associated cost shall be a lien against the Property, which may be satisfied by the sale of the Property, unless the owner applies to the court for reinstatement of control of the property as provided in N.J.S.A. 55:19-92.

(4) After the complaint is filed, the complaint must be served in accordance with the New Jersey Rules of Court.

D. After serving the notice of intent pursuant to Subsection 'C' of this section, the Township or its designee may enter upon that Property after written notice to the Owner by certified mail, return receipt requested, in order to secure, stabilize or repair the Property, or in order to inspect the Property for purposes of preparing a rehabilitation plan to be submitted to the court pursuant to N.J.S.A. 55:19-89.

**§12-7.11. PROPERTY OWNER DEFENSE AGAINST COMPLAINT.**

A. An Owner may defend against a complaint filed pursuant to N.J.S.A. 55:19-84 through 86, by submitting a plan for the rehabilitation and reuse of the Property, which is the subject of the complaint, and by posting a bond equal to 125% of the amount otherwise determined by the Public Officer of the court to be the projected cost of rehabilitation in accordance with N.J.S.A. 55:19-87.

B. Any plan submitted by an Owner to defend against a complaint shall be submitted within sixty (60) days after the complaint has been filed, unless the Court provides the Owner with an extension of time for good cause shown.

C. A plan submitted by an Owner pursuant to this section shall include, but not be limited to the requirements set forth in N.J.S.A. 55:19-87.

D. Where the Court approves the rehabilitation plan of the Owner or other party in interest, then it may appoint the Public Officer to act as monitor of compliance and progress. If the Owner or Interested Party fails to carry out any step in the approved plan, then the Township may apply to the Court to have the posted bond forfeited, to transfer possession of the building to the

Township to complete the rehabilitation plan, and to grant authorization to use the bond proceeds for the rehabilitation. The Owner or other party in interest shall provide quarterly reports to the Public Officer on its activities and progress toward rehabilitation and reuse of the Property.

**§12-7.12. MORTGAGE OR LIEN HOLDERS DESIGNATED IN POSSESSION.**

**A.** If an Owner is unsuccessful in defending against a complaint filed pursuant to N.J.S.A. 55:19-84, the Mortgage Holder or Lien Holder may seek to be designated in possession of the Property by submitting a plan and posting a bond meeting the same conditions as set forth in N.J.S.A. 55:19-87. Their plan must be submitted within 60 days following the Court's rejection of the Owner's plan, unless the Court provides the Mortgage Holder or Lien Holder with an extension of time for good cause shown. If the Court approves any such Mortgage Holder or Lien Holder's plan, it shall designate that party to be in possession of the Property for purposes of ensuring its rehabilitation and reuse, and may appoint the Public Officer to act as monitor of the party's compliance.

**B.** The Mortgage Holder or Lien Holder, as the case may be, shall provide quarterly reports to the Court and the Public Officer on its activities and progress toward rehabilitation and reuse of the Property. If the Mortgage Holder or Lien Holder fails to carry out any material step in the approved plan, then the Public Officer shall notify the Court, which may order the posted bond forfeit, grant the Township possession of the Property, and authorize the Township to use the proceeds of the bond for rehabilitation of the Property.

**C.** Any sums incurred or advanced for the purpose of rehabilitating the Property by a Mortgage Holder or Lien Holder granted possession of a Property, including Court costs and reasonable attorney's fees, may be added to the unpaid balance due to that Mortgage Holder or Lien Holder, with interest calculated at the same rate set forth in the note or security agreement; or, in the case of a tax Lien Holder, at the statutory interest rate for subsequent liens.

**§12-7.13. TOWNSHIP REHABILITATION OR DESIGNATION OF QUALIFIED REHABILITATION ENTITY.**

**A.** If no Mortgage Holder or Lien Holder meets the conditions of N.J.S.A. 55:19-88, then the Township may submit a plan to the Court which conforms to the provisions of N.J.S.A. 55:19-87. Such plan shall designate whether the Township or a qualified rehabilitation entity shall undertake the rehabilitation plan in accordance with the provisions of N.J.S.A. 55:19-90.

**B.** The Mayor and Council of the Township may designate a Qualified Rehabilitation Entity for the purpose of exercising the Township's rights, where that designation will further the

rehabilitation and reuse of the Property consistent with Township's plans and objectives.

C. Regardless of whether the Township exercises its rights directly or the Mayor and Council designates a Qualified Rehabilitation Entity pursuant to this section, while in possession of a Property, the Township shall maintain, safeguard, and maintain insurance on the Property. Notwithstanding the Township's possession of the Property, the Owner of the Property shall not be relieved of any civil or criminal liability or any duty imposed by reason of acts or omissions of the Owner.

**§12-7.14. TOWNSHIP DEEMED POSSESSOR; BORROWING OF FUNDS; REPORTING AND FILING REQUIREMENTS.**

A. If the Township is granted possession of a Property pursuant to N.J.S.A. 55:19-89, the Township shall be deemed to have an ownership interest in the Property for the purposes set forth in N.J.S.A. 55:19-91.

(1) Notwithstanding the granting of possession to the Township, nothing in N.J.S.A. 55:19-78 et al., shall be deemed to relieve the Owner of any obligation for the payment of taxes or other Township liens and charges, or mortgages or liens to any party, whether those taxes, charges or liens are incurred before or after the granting of possession.

(2) The granting of possession shall not suspend any obligation the Owner may have as of the date of the granting of possession for payment of any operating or maintenance expense associated with the Property, whether or not billed at the time of the granting of possession.

B. The Court may approve the borrowing of funds by the Township to rehabilitate the Property and may grant a lien or security interests with priority over all other liens or mortgages other than municipal liens in accordance with N.J.S.A. 55:19-91. The Township shall record any lien authorized by the court with the Monmouth County Clerk.

C. Where the Township has designated a Qualified Rehabilitation Entity to act on its behalf, the qualified rehabilitation entity shall provide bi-monthly reports to the Public Officer on its activities and progress toward rehabilitation and reuse of the Property. The Township or qualified rehabilitation entity, as the case may be, shall provide such reports to the Court as the Court determines to be necessary.

D. The Township shall file a Notice of Completion with the Court, and shall also serve a copy on the Owner and any Mortgage Holder or Lien Holder, at such time as the Township has determined that no more than six (6) months remain to the

anticipated date on which rehabilitation will be complete. This notice shall include an affidavit of the Public Officer, attesting that the rehabilitation is anticipated to be completed within six (6) months, and a statement setting forth the actions as it plans to undertake consistent with the plan.

**§12-7.15. PETITION FOR REINSTATEMENT OF CONTROL AND POSSESSION BY OWNER.**

**A.** An Owner may petition for reinstatement of the Owner's control and possession of the property, pursuant to N.J.S.A. 55:19-92, at any time after one (1) year from the Court's removal of possession, but no later than thirty (30) days after the Township of Aberdeen has filed a Notice of Completion with the Court or, in the event the Notice of Completion is filed within less than one (1) year of the grant of possession, within thirty (30) days after the Township has filed said Notice.

**B.** The Court may allow additional time for good cause if that additional time does not materially delay completion of the rehabilitation, place undue hardship on the Township or affect any of the terms or conditions under which the Township has applied for or received financing for the rehabilitation of the Property.

**§12-7.16. PROCEDURE FOR TOWNSHIP TO PLACE LIENS, OBTAIN TITLE AND SELL PROPERTY. [N.J.S.A. 55:19-98]**

**A.** The Public Officer, with the approval of the Court, may place a lien on the Property to cover any costs of the Township in connection with any proceeding under N.J.S.A. 55:19-78 et seq. incurred prior to the grant by the Court of an order of possession, which may include costs incurred to stabilize or secure the Property to ensure that it can be rehabilitated in a cost-effective manner. Any such lien shall be considered a Township lien for the purposes of N.J.S.A. 54:5-9, with the rights and status of a Township lien pursuant thereto.

**B.** Where the Township seeks to gain title to the Property, pursuant to N.J.S.A. 55:19-96, it shall purchase the Property for fair market value on such terms as the Court shall approve, and may place the proceeds of sale in escrow with the Court.

**C.** The Court may authorize the Township to sell the Property free and clear of liens, claims and encumbrances, in which event all such liens, claims and encumbrances shall be transferred to the proceeds of sale with the same priority as existed prior to resale in accordance with the provisions of this section, except that municipal liens shall be paid at settlement. The proceeds of the purchase of the Property shall be distributed as set forth in N.J.S.A. 55:19-97.

**D.** The municipality may seek approval of the court to sell the property to a third party when the court finds that such conveyance will further the effective and timely rehabilitation

and reuse of the property. Upon approval by the Court, the Township shall sell the Property on such terms and at such price as the Court shall approve, and may place the proceeds of sale in escrow with the Court.

**E.** With the exception of the holding of special tax sales pursuant to N.J.S.A. 55:19-101, the remedies available under N.J.S.A. 55:19-78 et seq. shall be available to the Township of Aberdeen with respect to any Abandoned Property, whether or not the Township has established an Abandoned Property List and whether or not the property at issue has been included on any such list.

**§12-7.17. POWERS OF CONSTRUCTION CODE OFFICIAL NOT AFFECTED.**

No provision of this Chapter shall be construed as restricting or otherwise abrogating the enforcement and other powers of the Township's Construction Code Official under the New Jersey Uniform Construction Code, including without limitation N.J.S.A. 52:27D-123 et seq., and N.J.A.C. 5:23-1.1 et seq. (collectively, the "Code"). The provisions of this Chapter shall be construed as consistent with the enforcement and other powers of the Township's Construction Code Official under the Code.

**§12-7.18. STATUTORY CONSISTENCY.**

All sections hereof arising from or citing a specific statutory reference shall be deemed as automatically adopting any amendment to such statute(s) as may be consistent with the Township's purposes in enacting this ordinance.

**§12-7.19. Severability and Repealer.**

If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated. All prior ordinances or parts of ordinances, which are inconsistent with any provisions of this ordinance, are hereby repealed as to the extent of such inconsistencies.

**§12-7.20. Effective Date.**

This ordinance shall take effect following adoption and publication in accordance with the laws of the State of New Jersey.

**ATTEST:**

\_\_\_\_\_  
Karen Ventura, Township Clerk

\_\_\_\_\_  
Fred Tagliarini, Mayor

**SYNOPSIS:** Abandoned properties create a wide range of problems for municipalities, including the Township of Aberdeen, and are presumptively considered nuisances in view of their negative effects on nearby properties, property values and the residents or users of those nearby properties. This Ordinance establishes and adopts the municipal powers that are authorized under the New Jersey Abandoned Property and Rehabilitation Act, N.J.S.A. 55:19-78 et seq.; thereby providing the Township of Aberdeen with the ability to preserve and restore vacant buildings that are at risk of being lost through neglect or disinvestment.