

**THE VILLAGE OF FLANAGAN
LIVINGSTON COUNTY, ILLINOIS**

ORDINANCE NO. 2016-11

**AN ORDINANCE ADOPTING VACANT BUILDING NUISANCE
PROVISIONS FOR THE VILLAGE OF FLANAGAN**

ADOPTED BY
THE PRESIDENT AND BOARD OF TRUSTEES
OF THE
VILLAGE OF FLANAGAN

This 20th day of December, 2016

VILLAGE OF FLANAGAN, ILLINOIS

ORDINANCE NO. 2016-11

**AN ORDINANCE ADOPTING VACANT BUILDING NUISANCE PROVISIONS
FOR THE VILLAGE OF FLANAGAN**

WHEREAS, the Village of Flanagan (hereinafter, the "Village"), an Illinois municipal corporation; and

WHEREAS, various state statutes authorize the Village to provide for the removal of certain nuisances from private properties within the Village, including cutting and removal of neglected weeds, grass, trees, and bushes, 65 ILCS 5/11-20-7, pest control activities, 65 ILCS 5/11-20-8, removal of infected trees, 65 ILCS 5/11-20-12, removal of garbage, debris, and graffiti, 65 ILCS 5/11-13, and removal, securing, and enclosing abandoned residential properties, 65 ILCS 5/11-20-15.1; and

WHEREAS, the Village incurs costs in abating these nuisances by performing property maintenance activities on these properties; and

WHEREAS, Section 11-20-15 of the Illinois Municipal Code, 65 ILCS 5/11-20-15, authorizes municipalities to record traditional liens against a property for these nuisance abatement and property maintenance costs; and

WHEREAS, the Illinois General Assembly recently adopted Public Act 96-856, authorizing municipalities to record "priority liens" against abandoned residential properties for costs incurred in certain property maintenance activities that would be senior to all other liens with the exception of tax liens; and

WHEREAS, the corporate authorities of the Village of Flanagan deem it to be in the interest of the public health, safety, and welfare of the residents of the Village to amend the Village Code to set forth the procedure for liens for property maintenance activities on vacant buildings and properties.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Flanagan, Counties of Livingston, as follows:

Section A. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

Section B. Adoption of Vacant Building Nuisance Provisions. The Village of Flanagan hereby adopts the Vacant Building Nuisance Provisions, attached hereto as Exhibit A, in their entirety as the regulations on vacant building replacing all other and previous ordinances adopted on same.

Section C. Enforcement Process. In enforcing this ordinance the Village will follow

this procedure:

1. For buildings and structures:
 - a. When the code official duly appointed by the Village determines a violation has occurred or has grounds to believe so, notice is to be sent pursuant to Ordinance 2016-11 to the property owner/occupant.
 - b. The code official gives notice of violation in writing including:
 - i. Description of real estate
 - ii. State the nature of the violation(s) and ordinance violated
 - iii. The potential penalties – fines, costs, fees
 - iv. Advise of opportunity to settle/resolve matter by paying minimum fine within fourteen (14) calendar days of the date of citation or notice
 - v. Attach a corrective order allowing “reasonable time” to make repairs/improvements to bring property into compliance citing applicable code provisions
 - vi. These notices are properly served by:
 1. Personal delivery by the Village to the owner or occupant; or
 2. Certified mail or first class mail to last known address; or
 3. If notice is returned showing the letter was not delivered place copy in conspicuous place in or about the owner’s premises
 - vii. If there is no payment within fourteen (14) calendar days of citation or notice the matter will be referred to the Village attorney
 - viii. A default in such payment tender shall be forwarded to the Village attorney
2. For all other ordinance violations:
 - a. Determine nuisance exists.
 - b. Make a record of the nuisance by taking photos and preparing documentation including dates.
 - c. Prepare notice and have it served.
 - d. Re-inspect after seven (7) calendar days from the date notice was served.

- e. Make record of re-inspection by taking photos and preparing documentation including dates.
- f. Obtain proof of service of notice.
- g. If there is no compliance, the Village may abate nuisance and document the costs thereof.
- h. Send itemization of costs with demand for payment to property owner. Advise that non-payment of these costs within sixty (60) calendar days will result in the Village filing a lien on the property and possible legal action to foreclose on the lien.
- i. Sixty (60) calendar days after abatement if there is no payment for the costs to the Village to abate nuisance, the Village may record a lien.
- j. If the lien not satisfied, after a period of time left to the Board, legal action may be authorized to foreclose on the lien.

Section D. Attorney's Fees and Costs. The owner or occupant of a non-compliant property shall be responsible for all reasonable attorney's fees and all costs incurred by the Village in enforcing this Ordinance.

Section E. Severability. In the event a court of competent jurisdiction finds this ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

Section F. Repeal and Savings Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or causes of action which shall have accrued to the Village of Flanagan prior to the effective date of this ordinance.

Section G. Effectiveness. This ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law and the penalty provisions therein shall be effective and commence 10 days after this Ordinance is printed in book or pamphlet form and published by the authority of the corporate authorities.

PRESENTED to the Board of Trustees of the Village of Flanagan, Livingston County, Illinois this 20th day of December, 2016.

PASSED by the Board of Trustees of the Village of Flanagan, Livingston County, Illinois, this 20th day of December, 2016.

SIGNED by the President of the Board of Trustees of the Village of Flanagan, Livingston County, Illinois, this 20th day of December, 2016.

AYES: _____

NAYES: _____

ABSENT: _____

Jason Montello
President, Board of Trustees
Village of Flanagan

IL (SEAL)

ATTEST:

Kristy Dodge, Village Clerk
Village of Flanagan

EXHIBIT A
VACANT BUILDING NUISANCE PROVISIONS

Section 1. Definition. A vacant building is a building or portion of a building which is:

1. Unoccupied and unsecured; or
2. Unoccupied and secured by boarding or other similar means; or
3. Unoccupied and a dangerous structure; or
4. Unoccupied and condemned by the Village pursuant to applicable provisions of this code; or
5. Unoccupied and has multiple code violations; or
6. Unoccupied and the building or its premises has been the site of unlawful activity within the previous six (6) months; or
7. Condemned by the Village and unlawfully occupied; or
8. Unoccupied for over one hundred eighty (180) days and during which time the Village has issued an order to correct public nuisance conditions and same have not been corrected in a code compliant manner; or
9. Unoccupied for over two (2) years; or
10. Defined in 65 ILCS 5/11-20-15.1 as an "abandoned residential property," being a residential dwelling unit that has been unoccupied by any lawful occupant or occupants for at least 90 days, and for which after such 90 day period the Village has made good faith efforts to contact the legal owner or owners of the property or, if known, the agent of the owner, and no contact has been made.

The definition of "vacant building" does not include, however, unoccupied buildings which are undergoing construction, renovation, or rehabilitation and which are in compliance with all applicable ordinances, codes, legislation, and regulations, and for which construction, renovation or rehabilitation is proceeding diligently to completion.

Section 2. Nuisance Declared.

Vacant buildings that are indefinitely vacant and in a state of disrepair or boarded are public nuisances in that they contribute to the decrease in value of surrounding properties, precipitate disinvestment by neighboring owners, provide a location for criminal activity, undermine the aesthetic character of the neighborhood and Village, and have other undesirable effects.

Section 3. Nuisance Abatement.

The Village is authorized to perform or provide for property maintenance activities to abate the nuisance caused by a vacant building, including the following:

1. Cutting and removal of neglected weeds, grass, trees, and bushes as authorized by the Village Ordinance and 65 ILCS 5/11-20-7;
2. Pest control activities, as authorized by 65 ILCS 5/11-20-8;
3. Removal of infected trees as authorized by 65 ILCS 5/11-20-12;
4. Removal of garbage, debris, and graffiti as authorized by 65 ILCS 5/11-20-13, and
5. Removal, securing, and enclosing abandoned residential properties as authorized by 65 ILCS 5/11-31-1.01.

Section 4. Charges for Nuisance Abatement.

- A. Collection of Costs. The Village shall have the authority to collect from the property owner the costs incurred in performing the property maintenance activities to abate the nuisances described in Section 3. The Village shall send a bill for the cost to the property owner, his agent, legal representative, or occupant in legal possession or control of the premises.
- B. Traditional Lien Procedure. If a bill sent pursuant to Subsection A is not paid in full within 30 days of the date of the bill, the Village shall have the authority to file and record a lien against the property, pursuant to Section 11-20-15 of the Illinois Municipal Code, 65 ILCS 5/11-20-15, and as set forth within the Village Ordinance. If no specific procedure is set forth in the Village Ordinance for the activity, the following shall apply:
 1. Notice of Lien. The Village or the person performing the service by authority of the Village, in its, his or her own name, may file a notice of lien in the office of the recorder of deeds in the county in which the real estate is located. The notice of lien shall be filed within one year after the cost and expense is incurred. If, for any one property, the Village engaged in any nuisance abatement activity described in Section 3 on more than one occasion during the course of one year, then the Village may combine any or all of the costs of those activities into a single notice of lien.

The notice of lien shall consist of a sworn statement setting forth:

- a. A description of the real estate that sufficiently describes the parcel;
- b. The amount of the cost and expense incurred or payable for the activities; and
- c. The date or dates when such cost and expense was incurred by the Village or someone working on behalf of the Village.

After recording, the notice of lien shall be sent by certified mail to the property owner, his agent or legal representative or occupant in legal possession or control of the premises and, if different, to the person who received the tax bill for the preceding year.

2. Release of Lien. Upon payment of the cost after the notice of lien has been filed as provided herein, the lien shall be released by the Village or person in whose name the lien has been filed, and the release shall be recorded of record in the same manner as recording the notice of lien.
3. Foreclosure of Lien. Subsequent to the filing of the above-described lien, the Village may cause to be filed a complaint for foreclosure of such lien, or upon becoming a defendant in a pending lawsuit affecting the premises or real estate, by answer to the complaint or in the nature of an intervening petition or cross-complaint the village may proceed in its corporate name to foreclose such lien. An action to foreclose a lien under this Section must be commenced within two years after the date of filing notice of lien. The property subject to a lien arising under this article shall be sold for nonpayment of the same, and the proceeds of such sale shall be applied to pay the monies owing the Village.

C. Priority Lien Procedures. The priority lien procedure described in this Subsection C shall apply only to costs incurred for activities performed on abandoned residential properties, as defined in Paragraph 14-9A(10) and is an alternative to the traditional lien authorized by Subsection B. If a bill sent pursuant to Subsection A is not paid in full within 30 days of the date of the bill, the Village shall have the authority to file and record a priority lien against the property, pursuant to Section 11-20-15.1 of the Illinois Municipal Code, 65 ILCS 5/11-20-15.1, in the following manner:

1. Notice of Lien. The Village or the person performing the service by authority of the Village, in its, his or her own name, may file a notice of a priority lien in the office of the recorder of deeds in the county in which the real estate is located. The notice of lien shall be filed within

one year after the cost and expense is incurred. If, for any one property, the Village engaged in any nuisance abatement activity described in Section 3 on more than one occasion during the course of one year, then the Village may combine any or all of the costs of those activities into a single notice of lien.

The notice of lien shall consist of a sworn statement setting forth:

- a. A description of the abandoned residential property that sufficiently describes the parcel;
- b. The amount of the cost incurred or payable for the activities;
- c. The date or dates when such cost was incurred by the Village or someone working on behalf of the Village; and
- d. A statement that the lien has been filed pursuant to one or more of the property maintenance activities described in Section 3 and authorized by 65 ILCS 5/11-20-(d), 65 ILCS 5/11-20-B(d), 65 ILCS 5/11-20-12(d), 65 ILCS 5/11-20-13(e), 65 ILCS 5/11-31-1.01, as applicable.

After recording, the notice of lien shall be sent by certified mail to the property owner, his agent or legal representative or occupant in legal possession or control of the premises and, if different, to the person who received the tax bill for the preceding year.

The Village may not file a lien if the lender has provided notice to the Village that the lender has performed, or will perform, remedial actions; provided, however, that the remedial actions must be performed or initiated in good faith within 30 days of the lender's notice to the Village.

2. Recordkeeping. To enforce a lien pursuant to this Subsection C, the Village must maintain contemporaneous records that include, at a minimum:
 - a. A dated statement of a finding by the Village that the property has become abandoned residential property;
 - b. The date when the property was first observed to be unoccupied by any lawful occupant;
 - c. A description of the actions taken by the Village to contact the legal owner of the property, or if known, any agent of the owner;

- d. A statement that no contacts were made with the legal owner or, if known, any agent of the owner;
 - e. A dated certification by a Village official of the necessity and specific nature of the work performed;
 - f. A copy of the agreement with the person or company performing the work and the rates and estimated cost of the work, if applicable;
 - g. Detailed invoices and payment vouchers for the work;
 - h. A statement whether the work was competitively bid, and if so, a copy of all proposals submitted by the bidders.
3. Release of Lien. Upon payment of the cost after the notice of lien has been filed as provided herein, the lien shall be released by the Village or person in whose name the lien has been filed, and the release shall be recorded of record in the same manner as recording the notice of lien.
4. Enforcement of Lien. A lien under this Subsection C is enforceable by the Village, or entity or person who performs work on behalf of the Village, at the hearing for confirmation of the foreclosure sale of the abandoned residential property and is limited to a claim of interest in the proceeds of the sale. The priority lien is superior to all other liens and encumbrances, except tax liens.