

ATTACHMENT A

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE 02-323

AN ORDINANCE PROVIDING FOR THE REGISTRATION OF VACANT COMMERCIAL BUILDINGS WITHIN THE COUNTY OF LOS ALAMOS, NEW MEXICO; ESTABLISHING REGISTRATION REQUIREMENTS AND FEES AND PROVIDING THE COLLECTION THEREOF; FIXING PENALTIES FOR THE VIOLATION THEREOF AND PROVIDING FOR THE ENFORCEMENT THEREOF

WHEREAS, the Incorporated County of Los Alamos (“County”) is an incorporated county of the State of New Mexico as provided in Section 5, Article 10 of the New Mexico Constitution; and

WHEREAS, County, pursuant to Section 5, Article 10 of the State Constitution, is also granted all powers of a municipality; and

WHEREAS, the New Mexico Legislature, pursuant to Chapters 3, 4, and 5 of the New Mexico Statutes Annotated generally outline the powers given municipalities and counties; and

WHEREAS, Section 3-18-17, expressly provides municipalities the power to regulate private and public property and nuisances; and

WHEREAS, County, in Article II of Chapter 18 (Environment) of the Los Alamos County Code of Ordinances (“Code”), has enacted ordinances governing the minimum conditions and the responsibilities of persons for maintenance of structures, including all existing residential and nonresidential structures, premises, and exterior property; and

WHEREAS, the County Council of the Incorporated County of Los Alamos (“County Council”) finds, determines, and declares that commercial buildings and structures which remain vacant and unoccupied for any appreciable period of time have a negative impact on surrounding properties and the community and contribute to blight, increase the risk of vandalism and arson in buildings, reduce community property values and tax base, and require additional public services; and

WHEREAS, County Council finds that commercial vacant buildings in both the Los Alamos and White Rock townsites represent disproportionate adverse impacts to the growth and development of vibrant downtown commercial districts in both townsites; and

WHEREAS, the purpose and intent of this Code Ordinance is to protect the public health, safety and well-being by enactment of this Article to:

1. Establish a process to address commercial, vacant, abandoned, foreclosed, and/or otherwise distressed commercial buildings and structures located within the County;
2. To identify, register, regulate and reduce the number of commercial vacant, abandoned or dilapidated primary buildings and structures located within the County;
3. To create conditions favorable to the general welfare, prosperity and harmonious development of the County;

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4. To establish the responsibilities of owners of vacant commercial buildings and structures and to acknowledge community impacts resulting from long-term vacancy of commercial buildings and structures;
5. Reduce, minimize, or eliminate the negative impacts on surrounding properties and neighborhoods from unsupervised vacant, abandoned, and foreclosed commercial buildings and structures; and
6. Provide for administration, enforcement and imposition of fees and penalties related to this Article.

WHEREAS, this Article shall apply to all vacant, abandoned, and foreclosed commercial buildings and structures within the County of Los Alamos, New Mexico. This Article shall apply to any such described commercial building that is fully intact, partially removed, burned, demolished, or destroyed, or a building in which any portion of the structure is remaining in place or on the site; and

WHEREAS it is found to be in the public interest for County to impose a fee in conjunction with registration of vacant, abandoned, and foreclosed commercial buildings and structures to offset the disproportionate costs imposed on County taxpayers by the presence of these properties; and

WHEREAS County Council finds these amendments to Chapter 18 are in the best interest of the County.

BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS:

Section 1. Article V of Chapter 18 of the County Code of Ordinances is amended as follows:

ARTICLE V

Vacant Commercial Building Registration

Sec. 18-198—18-218. Reserved

Sec. 18-219 OTHER ORDINANCES.

This Article shall not be construed to prevent the enforcement of other applicable ordinances, statutes, codes, legislation, or regulations that prescribe standards other than are provided herein, and in the event of conflict, the most restrictive shall apply.

Sec. 18-220 DEFINITIONS.

For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Building means any structure built and maintained for the support, shelter or enclosure of persons, animals, chattels, or property of any kind.

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Commercial Building means any building or structure, whether fully intact, partially removed, burned, demolished or destroyed including any portion of a building or structure remaining in place or on the parcel, whose use involves the purchase, sale other financial transaction involving the handling or disposition of any article, substance, commodity, or service; or the management of office building, offices, recreational or amusement centers; or the maintenance and use of offices, structures and premises by professions and trades rendering services; by for profit or non-for-profit uses.

Code Enforcement Officer, referred to throughout this Article as Officer, means the designated Code Enforcement Official of the County of Los Alamos, or his or her authorized designate, that may include (but not be limited to) any law enforcement officer, building official, zoning official, fire inspector or building inspector, or other person authorized by the County to enforce the applicable code(s).

Discreet Unit means one or more rooms of a commercial building for or used as a place of business that is rented or leased from the owner of the commercial building.

Warehouse means building, structure or complex where raw materials or manufactured goods are stored before their export or distribution for sale and is actively operated as a commercial or industrial warehouse enterprise.

Sec. 18-221 EXEMPTIONS.

- (a) Residential housing shall be exempt from the requirements of this Article.
- (b) Any government agency or entity that owns vacant commercial building property will be exempt from the requirements of this Article.
- (c) For the purposes of this Article, any commercial building with a loan or financing provision provided by or insured by a federal, state, or local government secured by a recorded security interest against commercial building shall not be exempt from the requirements of this Article.

Sec. 18-222 OBLIGATION OF VACANT COMMERCIAL BUILDING OWNER.

- (a) The owner of a vacant commercial building or structure shall obtain a vacant building permit in accordance with the requirements Section 18-223 of this article for the period during which it is vacant. When a building or structure becomes vacant, as defined in this Article, the owner of the building shall apply for and obtain a vacant building permit and pay the fee within thirty (30) days of the vacancy of the commercial building. A separate permit is required for each vacant commercial building. A vacant building permit issued is not transferable.
- (b) Upon the expiration of a vacant building permit, if the commercial building is still vacant, the owner shall renew the permit within ten (10) days of expiration in the same manner as the expired permit. All renewed permits shall be subject to all conditions and obligations imposed by this Article or the initial permit unless expressly exempted therefrom. Failure to timely renew a vacant building permit is a violation of this Article.
- (c) The owner of a vacant commercial building shall comply with all building, fire, life safety, zoning, nuisance and other applicable codes or ordinances and shall apply for all necessary building, fire prevention, and zoning permits necessary to bring the commercial vacant

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building into compliance with all applicable codes upon application for a vacant building permit.

(d) The owner of a vacant commercial building shall immediately remove any waste, combustible refuse, rubbish, or debris from the interior of the structure in compliance with the applicable fire prevention code. The owner of a vacant building or structure shall also immediately remove any waste, rubbish, debris, or excessive vegetation from the property surrounding the vacant building or structure.

(e) The owner of a vacant commercial building shall provide the police department with a list of persons authorized to be present in the building and shall provide notices of trespass to the police authorizing the arrest for trespass of individuals not on the list. The owner shall update the authorized person list as needed.

(f) The owner of a vacant commercial building shall provide proof of General Liability, no less than three hundred thousand dollars (\$300,000.00) for the property, or the current actual property value as determined by the Los Alamos County Assessor (whichever is greater) and/or a surety bond for the value of structure if insurance cannot be obtained.

(g) The owner of a commercial vacant building shall designate a local agent by providing and maintain 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 Article. This natural person must maintain an office in Los Alamos County, New Mexico, or must reside within Los Alamos County, New Mexico. An owner who is a natural person and who meets the requirements of this subsection as to location of residence or office may designate themselves as agent.

(h) The owner of a vacant commercial building shall notify the Code Enforcement Officer within thirty (30) days of any change in the registration information by filing an amended registration statement on a form provided for such purpose.

Sec. 18-223 VACANT COMMERCIAL BUILDING REGISTRATION REQUIREMENTS.

(a) Each vacant building registration shall be submitted in writing, on a form provided by the Community Development Department, by the owner on a form to the Code Enforcement Officer prior to issuance of a vacant building permit by the Officer. The owner shall remit fee as described in Section 18-226 of this Article with registration documentation. Initial registration for every vacant building, regardless of condition, is due no later than July 1, 2022.

(b) No registration is valid unless filled out accurately and completely, signed by the owner, and the proper fees have been paid. A registration fee once tendered may not be refunded or transferred. It is a violation of this article for an owner to provide materially false information on an application for registration.

Sec. 18-224 DETERMINATION OF VACANT COMMERCIAL BUILDING.

(a) The Code Enforcement Officer may investigate all commercial buildings in the County believed to be vacant and decide for each as to whether the commercial building is vacant based on the following criteria:

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- (1) The commercial building is unoccupied for one hundred eighty (180) days; or
- (2) Is occupied or inhabited in violation of any provision of the County Code or the applicable Building Code; is subject to a declaration of condemnation; or is occupied only by trespassers or transients seeking a temporary hiding place or shelter; or
- (3) Is a commercial building that has not had a valid Certificate of Occupancy, as provided for in Section 10-82 of the County Code, for one hundred eighty (180) days; or
- (4) Is a commercial building at which lawful business has ceased for one hundred eighty (180) days, or the occupancy of the commercial building is at a level where 75% of the square footage of the commercial building, or 75% of the discreet units in the building, whichever is less, are vacant for one hundred eighty (180) days; or
- (5) Is a commercial building which mortgage or tax foreclosure proceedings have been initiated; or
- (6) Is a commercial vacant building where no mortgage or tax payments have been made for at least one hundred eighty (180) days; or
- (7) Is unsafe, unsanitary, a fire hazard or otherwise constitutes a danger to the public health, safety, or welfare in violation of the applicable Building Code, Fire Code, or other applicable life safety codes; or
- (8) Lacks active utilities service; or
- (9) Has been abandoned by the owner; or
- (10) Is under a condemnation notice or order to vacate; or
- (11) Does not receive mail service; or
- (12) Has one (1) or more broken or boarded windows; or
- (13) Is open to casual entry or trespass; or
- (14) Does not appear to be furnished; or
- (15) Is deteriorating due to a lack of maintenance or neglect; or
- (16) Has property taxes in arrears for more than one (1) year; or
- (17) Is a potential hazard or danger to the safety of persons; or
- (18) Is structurally unsound; or
- (19) Does not economically perform as a commercial building would in generating income for the business/property owner and gross receipts tax (GRT) for the

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local government for one hundred eighty (180) days; or

- (20) Is utilized solely for personal or private storage of vehicles, equipment, machinery, supplies, parts or miscellaneous without an active residential, commercial, or industrial purpose; or
- (21) Lawful activity that the building or structure was designed and built for or intended to be used for has ceased for a period of one hundred eighty (180) days.

(b) Any determination that a building is a vacant commercial building shall be in writing and shall state the factual basis for the determination. For buildings the Officer determines to be vacant commercial buildings, he/she shall send notice of the written determination, with the factual findings, to the last owner of record listed by the County recorder of deeds, post the notice on the vacant commercial building in a conspicuous place, and publish notice of same in a newspaper of general circulation. Failure of delivery shall not excuse a person from complying with this Article.

(c) The notice shall contain a statement of the obligations of the owner of a building determined to be a vacant commercial building, a copy of the registration form the owner is required to file pursuant to this Article, and a notice of the owner's right to appeal the Officer's determination.

(d) The Officer may determine that a building which meets any of the criteria set forth in this chapter is not to be regulated under this chapter for a stated period, if upon consideration of reliable, substantiated, and sufficient evidence, the Officer determines that regulation of the building under this chapter would not serve the public health, welfare, and safety and makes written findings in support of his/her decision. Any such determination shall be in writing and shall state the factual basis for the determination.

Sec. 18-225 APPEAL OF DETERMINATION.

(a) The owner of a building determined by the Code Enforcement Officer to be a vacant building as provided for in this Article may appeal that determination to the Los Alamos County Council. Such appeal shall be in writing and shall be filed with the County within thirty (30) days of the date of mailing of the notice of determination. The filing of an appeal stays the owner's obligation to register their building as required by this Article, unless the County Manager certifies to the County Council after the notice of appeal shall have been filed that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.

(b) The appeal shall contain a complete statement of the reasons the owner disputes the Code Enforcement Officer's determination, shall set forth specific facts in support thereof, and shall include all evidence the owner relies upon to support the appeal. The County Council shall decide the appeal based on facts presented by the owner in his or her written appeal and the Code Enforcement Officer's written determination and shall affirm, deny, or modify the determination.

(c) The County Council shall send written notice of the appeal decision to the owner within thirty (30) days of the appeal. The County Council may, at its option, seek additional information from the owner.

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Sec. 18-226 VACANT BUILDING REGISTRATION FEES.

(a) The owner of a vacant building shall submit an annual fee for the registration of a vacant building. The owner shall be required to renew the vacant building registration each year on the anniversary date of the initial filing for the time the building remains vacant and pay the escalating annual fee as follows:

	Less than 10,000 SF	Greater than 10,000 SF
Initial Registration Fee	\$100.00	\$250.00
Second Year Registration Fee	\$250.00	\$500.00
Third Year Registration Fee	\$500.00	\$1,000.00
Fourth Year Registration Fee	\$750.00	\$1,750.00
Fifth Year and Each Subsequent Year Registration Fee	\$1,000.00	\$2,500.00

(b) Annual fees are non-refundable, shall be capped at the fifth-year amount, and shall not increase after the fifth year.

(c) Basis of Structure Area determination shall be the following:

- (1) Area of primary building or structure (including additions) where one primary building and one or more accessory buildings or structures exist;
- (2) Each discrete unit of a commercial building consisting of independently operated businesses or commercial enterprises.

(d) No prorated refunds shall be returned. All fees are non-refundable.

(c) The payment of all fees under this Article is secured by a lien against the property, which may be placed on the tax roll for collection in the same manner and subject to the same interest and penalties applicable to delinquent special assessments.

Sec. 18-227 FAILURE TO PAY FEES AND CHARGES.

An unpaid fee shall be and constitute a lien against the property, to be enforced and foreclosed as provided state statute for other municipal liens.

Sec. 18-228 PENALTY.

Any person who shall be convicted of a violation of this Article shall be fined a minimum of one hundred dollars (\$100.00), or an amount not exceeding five hundred dollars (\$500.00) or be imprisoned for a period not exceeding thirty (30) days, or be both so fined and imprisoned, in the discretion of the court. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

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Section 2. Severability. Should any section, paragraph, clause or provision of this Ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 3. Effective Date. This Code Ordinance shall become effective thirty (30) days after publication of notice of its adoption.

Section 4. Repealer. All other ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

PASSED AND ADOPTED this ____ day of _____ 2021.

INCORPORATED COUNTY OF LOS ALAMOS

**Randall T. Ryti,
Council Chair**

ATTEST:

**Naomi D. Maestas,
Los Alamos County Clerk**