

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE

AN ORDINANCE AMENDING THE TEXT OF CHAPTER 18, ARTICLE II TO ADD A NEW SECTION 18-67-70 TO CREATE A VACANCY ORDINANCE

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, the 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 (see generally NMSA 1978, Section 3-18-1 et seq.) has given municipalities and counties the power to regulate land use within their territorial limits; and

WHEREAS, such authority, NMSA 1978, Section 3-18-17, includes the power to regulate private and public property and nuisances; and

WHEREAS, the County, in Chapter 18 of the Los Alamos County Code of Ordinances (“Code”) has enacted ordinances regulating the use of land within its borders; and

WHEREAS, the County Council, in Article II of Chapter 18 of the Code, has enacted ordinances to regulate the various nuisances within the County; and

WHEREAS, additional legislative ordinances are required to be enacted to enable orderly growth and future economic development, the County desires to allow for; and

WHEREAS, vacant commercial buildings throughout the County are being neglected and are not being cleaned up or maintained for years by owners or agents in control of the properties, which are significantly reducing the attractiveness of the County and creating public nuisances in commercial areas in Los Alamos County.

WHEREAS, requiring owners of vacant commercial buildings to register the vacant buildings, bring them up to code, maintain them according to this section and require them to be actively seeking tenants, will encourage the optimum use of the commercial real estate, attract new business, enhance the tax base of real estate and the taxable value of businesses, encourage employment and commercial growth, and in general benefit the health, safety, and welfare of the community as a whole; and

WHEREAS, the County believes that by enactment of the proposed ordinance will create a more orderly and consistent development of the County’s commercial districts; and

WHEREAS, the Planning and Zoning Commission, on XXX DATE held a public hearing 1 Ordinance No. 02-XXXX on the proposed amendment to text of Chapter 18 by the addition of the new ordinance; and

WHEREAS, the County Council, after a properly noticed public hearing on XXX DATE and due consideration and recommendation by the Planning and Zoning Commission, hereby finds that the new ordinance, is in the best interest of the County.

SECTION 1. Article II of Chapter 18 of the Los Alamos Code of Ordinances of the Incorporated County of Los Alamos is amended to add a new section 18-68 as follows:

Section 18-68 Vacant Building Ordinance:

(a) Declaration of nuisance.

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Vacant buildings that are not maintained and permitted in conformity with this chapter are declared a public nuisance.

Definitions.

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

Owner. Includes any person who holds record title to the property and any person entitled under any agreement to the control or direction of the management or disposition of the building or premises or of any part of the building or premises where the violation in question occurs.

Vacant Building. A commercial building which is lacking habitual presence of natural persons who have a legal right to be on the premises, or at which substantially all lawful business operations have ceased for a period of longer than 90 days. Commercial property shall be considered vacant when substantially (60% or more) all of the square footage is unoccupied. Lodging and multi-unit commercial properties. Shall be considered vacant when substantially (60% or more) of the units are unfit for use or unoccupied.

Notwithstanding the foregoing, if the County determines that a substantial, unoccupied portion of an otherwise occupied structure has the potential for becoming a nuisance or having a negative effect on the surrounding area, the County may notify the property owner that a vacant building maintenance permit shall be required for the unoccupied portion of the otherwise occupied building.

If a vacant building is used for the storage of materials related to a commercial enterprise, the owner must possess a valid business permit consistent with said business. If stored materials are not related to a commercial enterprise and are determined by the County to be a nuisance, fire hazard, or having a negative effect on the surrounding area, the owner may not obtain a vacant building maintenance permit until such time as the unacceptable conditions are addressed.

A structure may be identified as vacant, under the provisions of this chapter, through any routine inspection by a planning and zoning official, by notification by any individual or entity.

Commercial. Is a structure that is generally used for conducting business and/or is situated in an area zoned for commercial purposes and uses.

Foreclosed Structure. Is real estate that as to which a court proceeding has been initiated by the filing of a complaint, petition or any form of request for relief as part of which any other party claims an interest, or as further provided in this chapter. An order of foreclosure is not needed in order for the requirements of this chapter to apply.

Vacant Building Maintenance Permit. A permit that must be obtained from the County if a building meets any of the definitions of vacant building stated above.

Maintenance Standards for Vacant Buildings. All commercial buildings meeting the definition above, are subject to the maintenance requirements listed below in 18-76 D.

Section 18-76

A. Application.

Application for a vacant building maintenance permit shall be made on a form provided by the County and verified by the owner. The application must be made within 30 days after the building has been vacant for more than 90 days. Failing to register a building will result in fines as described below. A vacant building maintenance permit shall be valid for one year from date of issuance.

B. Inspection.

Inspection by County. The County shall cause an inspection of the premises for the purpose of determining that it will be safe for entry by firefighters and police officers in time of emergency, is in compliance with all building codes and that the building complies with the vacant building maintenance standards set forth in Section 18-76D. If the building does not so comply, the County shall promptly specify the deficiencies and the deadline for completion of the work. The County may conditionally grant a permit while the owner completes the work necessary for the building to comply with the standards set forth in Section 18-76 D. The cost of the inspection shall be paid for by the Owner of the building.

C. Issuance. The County shall issue a vacant building maintenance permit on being satisfied after having inspected the building that the building is in compliance with the vacant building maintenance standards set forth in Section 18-76D; otherwise, the County shall deny the permit or may conditionally grant the permit while the owner completes the work necessary to comply with the standards.

D. Vacant building maintenance standards.

- (1) Building openings. Doors, windows, areaways, and other openings are weathertight and secured against entry by birds, vermin, and trespassers. Missing or broken doors, windows, and opening coverings must be replaced or covered with one-half-inch CDX plywood, painted grey, weather protected, and tightly fitted to the opening and secured by screws or bolts.
- (2) Roofs. The roof and flashings are sound, tight, and water sealed, and drained to prevent dampness or deterioration in the walls or interior.
- (3) Drainage. The building storm drainage system is adequately sized, installed in an approved manner, functional, and discharged in an approved manner.
- (4) Building structure. The building is maintained in a good repair, structurally sound, free from debris, rubbish and garbage, and sanitary, so as not to pose a threat to the public health or safety.

- (5) Structural members. The structural members are free of deterioration and capable of safely bearing imposed dead and live loads.
- (6) Foundation walls. The foundation walls are plumb, free from open cracks and breaks, and vermin proof.
- (7) Exterior walls. The exterior walls are free of holes, breaks, and loose or rotting materials. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather-coating materials, such as paint or similar surface treatment as needed or determined by the County.
- (8) Decorative features. The cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features are safe, anchored, and in good repair. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather-coating materials, such as paint or similar surface treatment as needed or determined by the County.
- (9) Overhanging extensions. All balconies, canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts and similar features are in good repair, anchored, safe and sound. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather-coating materials, such as paint or similar surface treatment as needed or determined by the County.
- (10) Chimneys and towers. Chimneys, cooling towers, smokestacks, and similar appurtenances are structurally safe. Exposed metal and wood surfaces are protected from the elements and against decay or rust by application of weather-coating materials, such as paint or similar surface treatment as needed or determined by the County.
- (11) Sidewalk openings. Openings in sidewalks are safe for pedestrian travel. Sidewalks are kept free of snow, ice and debris.
- (12) Accessory and appurtenant structures. Accessory and appurtenant structures such as garages, sheds, and fences are free from safety, health, and fire hazards.
- (13) Premises. The premises on which a structure is located are clean, safe and sanitary and does not pose a threat to the public health or safety.
- (14) External appearance. The external appearance of the structure and premises shall be maintained in such a manner that the vacant building will not be unreasonably detrimental to property values or the character of the neighborhood as determined by the County.
- (15) Required marketing. The owner shall diligently market said property. The owner must show proof to the County of the marketing plan for the building.
- (16) Current building code. All vacant commercial buildings must be brought up to the standards of the current building code for the intended purpose of the building.
- (17) Duration of vacancy. Buildings may only be vacant for 2 years, unless there are extraordinary circumstances, as determined by the County. After 2 years of vacancy, attempts to rent shall be reviewed and fines shall be imposed.

E. Insurance.

Certificate of insurance. Upon application for a vacant building maintenance permit, the owner shall provide a certificate(s) of insurance for commercial liability, if a commercial building; a certificate of insurance for personal, premises or both types of liability insurance; and a fire legal endorsement, if applicable.

F. Designation of local agent.

(1) In addition to other information required by the County, the application 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 chapter. This person must maintain an office in Los Alamos County, New Mexico, or must actually 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. By designating an authorized agent under the provisions of this subsection, the owner is consenting to receive all legal notices regarding the vacant building. The agent's designation for the purposes of this subsection continues until the owner notifies the appropriate department or division thereof of a change of authorized agent or until the owner files an application for a renewal of the vacant building maintenance permit.

(2) Any owner who fails to register a vacant building under the provisions of this chapter shall be deemed to consent to receive, by posting at the building and by regular mail to the owner's address of record in the Los Alamos County Assessor's Office, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

G. Procedure for renewal.

(1) At the time of application for the annual renewal of a vacant building maintenance permit, the owner shall arrange with the County for the inspection of the building, its premises, and interior. All inspection shall be paid for by the owner. If the owner fails or refuses to consent to and arrange for an inspection, the application for renewal shall be denied. The County shall renew a vacant building maintenance permit on being satisfied after having inspected the building that the building is in compliance with the vacant building maintenance standards set forth above and that the building has an active marketing plan; otherwise, the County shall deny renewal.

(2) The permit renewal shall be for one year; such renewal shall run from the date of expiration of the previously issued or renewed permit.

H. Fees.

(1) Property zoned as commercial, business, or industrial. A nonrefundable fee of \$500 shall be charged for processing each initial application for a vacant building maintenance permit and for each application for any renewal of a vacant building maintenance permit. A separate application shall be completed for each noncontiguous structure, excluding accessory and appurtenant structures to the main structure. Upon the County's first approval of a property's vacant building maintenance permit, a permit fee of \$600 shall be paid by the property's owners to, and received by, the County as a pre-condition to the permit being issued to the property's owner(s). Upon the County's second approval of a property's vacant building maintenance permit, a permit fee of \$1000 shall be paid by the property's owners to, and received by, the County as a pre-condition to the permit being issued to the property's owner(s). A renewal beyond the second year of vacancy shall not be given unless the owner has demonstrated to the County that the owner has a diligent marketing plan to rent the property. Upon the County's third or subsequent approval of a property's vacant building maintenance permit, a permit fee of \$3,000 shall be paid by the

property's owners to, and received by, the County as a pre-condition to the permit being issued to the property's owner(s).

(2) Thirty days after a building becomes a vacant building with no vacant building maintenance permit application or renewal application, having been submitted, the owner shall be liable for a civil penalty of \$500. After 60 days, the owner shall be liable for a civil penalty of \$50/day.

Section 18-77

Enforcement; civil penalties.

A. Parties liable.

(1) Unless otherwise specifically provided, the owner, their agent for the purpose of managing, controlling, or collecting rents, and any other person managing or controlling a building or premises in any part of which there is a violation of the provisions of this chapter shall be liable for any violation therein, existing or occurring, or which may have existed or occurred, at or during any time when such person is or was the person owning or managing, controlling, or acting as agent in regard to said buildings or premises and is subject to injunctions, abatement orders, or other remedial orders.

(2) The liabilities and obligations imposed on an owner shall attach to any mortgage company or any other person with or without an interest in the building or premises who knowingly takes any action in any judicial or administrative proceeding that is intended to delay issuance or enforcement of any remedy for any violation of this chapter; provided that with respect to fines such person shall be liable only for fines which accrue on or after the date of such action; and further provided that no liability shall be imposed under this chapter for any action taken in any proceeding, including a proceeding to foreclose on a lien, that does not delay or prevent the prosecution of any action brought by the County to enforce this chapter.

B. Civil penalties.

(1) Thirty days after a building becomes a vacant building with no vacant building maintenance permit application or renewal application, having been submitted, the owner shall be liable for a civil penalty of \$500. After 60 days, the owner shall be liable for a civil penalty of \$50/day.

(2) The County may extend the time periods for acquiring or renewing a vacant building maintenance permit, if a request for extension is made prior to the expiration of any time period and if the owner or other interested party is engaged in good faith negotiations with the County regarding the conditions or requirements of any vacant building maintenance permit.

C. Lien. In addition to being the personal liability of the owner, the civil penalties provided in this chapter shall be a lien on the property and may be filed and foreclosed in the manner provided by NMSA §§ 3-36-1 through 3-36-7.

D. Criminal penalties. Any violation of this chapter may, in addition to any other remedy provided by law, be punished in accordance with the County's criminal code procedure.

E. Judicial enforcement. The County may bring an action in any court of competent jurisdiction to acquire preliminary injunctive relief or any other appropriate remedy to enforce this chapter. The County's costs and attorney fees incurred in any such action shall be a lien on the property that may be filed and foreclosed in the manner provided by NMSA §§ 3-36-1 through 3-36-7.

Section 16-78 Appeal: filing fee.

A. The owner may appeal the determination of either the refusal to grant a vacant building maintenance permit, the refusal to renew a vacant building maintenance permit, or any civil penalty provided for in this chapter. The appeal is to the Los Alamos County Council by filing an appeal within 30 calendar days of the date of service, pursuant to Section 18-76 F or in person, of the notice of the refusal to grant a vacant building maintenance permit, the refusal to renew a vacant building maintenance permit or the notice of any civil penalty provided in this chapter. Such request shall be made in writing and filed in the Office of the County Clerk. The appeal shall identify the property and state the grounds for appeal together with all material facts in support thereof. A filing fee of \$50 shall accompany each appeal application. When an appeal hearing is requested, the County staff for the County Council shall send written notice by certified mail, return receipt requested, to the owner of the time and place of the hearing and shall publish and post notice of appeal hearing. At the hearing, the owner or other interested party shall have the right to present evidence relating to whether the County engaged in an abuse of discretion by not approving or renewing a vacant building maintenance permit or relating to whether a civil penalty should have been imposed. The County Council shall, following the hearing, issue a written decision.

B. If the County refuses to exercise its discretion to abate, reduce, or subordinate a civil penalty that has been properly imposed, such refusal shall not be reviewable by appeal. With regard to civil penalties provided for by this chapter, the County Council's jurisdiction is limited to the issue of whether the penalty was properly imposed. In order to protect the County's interests, a lien for the civil penalty may be filed while the appeal is pending; any lien securing a civil penalty shall be promptly released or partially released if and to the extent the County Council rules in favor of the owner or other interested party.

C. The filing of any appeal shall not stay or otherwise affect any other legal proceedings to enforce any other provisions of these ordinances, including, but not limited to, any to enjoin a nuisance or enforce Chapter 18, Nuisances.