

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE BURGESS AND TOWN COUNCIL OF THE BOROUGH OF POTTSTOWN AMENDING CHAPTER 5, CODE ENFORCEMENT, TO CREATE A NEW PART 16, REGISTRATION OF VACANT COMMERCIAL UNITS, INTENDED TO CREATE A REGULATORY SCHEME FOR THE REGISTRATION, INVENTORYING, INSPECTION, AND MONITORING OF VACANT COMMERCIAL UNITS WITHIN POTTSTOWN BOROUGH.**

**NOW, THEREFORE**, by the Burgess and Town Council of the Borough of Pottstown, Montgomery County, Pennsylvania, it is hereby **ENACTED** and **ORDAINED** as follows:

**SECTION 1.** Chapter 5, Code Enforcement, of the Code of Ordinances of the Borough of Pottstown, as amended, is hereby amended to provide for a new Part 16, Registration of Vacant Commercial Units, which shall consist of the following:

**§ 1601 Purpose.**

This Part is intended to (1) assure the proper maintenance of vacant commercial units for the purpose of protecting the public health, safety and welfare; (2) enable the monitoring of the number of vacant commercial units within the Borough; (3) enable Borough officials to assess the effects of the condition of those vacant commercial units on nearby residences and businesses, as well as more generally on the neighborhoods in which they are located; (4) enable Borough officials to assess and proactively address fire safety hazards, visual blight, temporary occupancy by transients including users and traffickers of illegal drugs, and unlawful occupancies which may be associated with vacant commercial units; (5) promote the rehabilitation, rental or sale of those units; (6) promote active, productive use of all properties within the Borough; and (7) aid in the creation of a database of vacant properties, the storage therein of hazardous materials, and their responsible parties to assist police, fire, and emergency responders during emergency events.

**§ 1602 Definitions.**

The following words and terms when used in this Part shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning, and words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa:

**ACTIVE RENOVATION OR REHABILITATION** - In order to be deemed a commercial unit undergoing an active renovation or rehabilitation, the owner of the unit must execute a rehabilitation agreement in a form acceptable to the

Enforcement Officer and secure all approvals and permits necessary to allow for the unit to be able to be occupied when the renovation or rehabilitation is complete.

**ACTIVELY MARKETED FOR SALE OR LEASE** - In order to be deemed a commercial unit actively marketed for sale or lease, (1) the unit must be listed on an electronic, publicly accessible list of properties for sale or lease or contractually listed at a marketable price for sale or lease with a licensed real estate broker, Pottstown Area Economic Development, Inc. (PAED), or other similarly qualified agent approved by the Enforcement Officer, with a listing duration of at least six months and (2) the owner must provide the Borough with the offer price for the unit, along with supporting evidence of the reasonableness of the offer price, such as a professional appraisal, the opinion of a qualified real estate professional, or three reasonable comparables for units sold or leased within the prior year.

**BOARDED** – Units where plywood or similar material is covering the space of (1) one or more exterior doors, other than a storm door, or (2) one or more windows, so that the doors or windows are temporarily secured.

**CODE** – Any ordinance, regulation, or law adopted, enacted, or in effect in and for Pottstown Borough including but not limited to this Part, the Uniform Construction Code, International Fire Code, International Property Maintenance Code, Plumbing Code, ICC Electrical Code, International Mechanical Code, International Existing Building Code, the Pottstown Zoning Ordinance and/or other future national or international codes or ordinance amendments that may be subsequently adopted by Pottstown Borough Council.

**COMMERCIAL UNIT** – Any unit used, intended to be used, or capable of being used for the buying and selling of goods, commodities, and/or services, and which may not otherwise be classified as an agricultural, industrial, institutional, or residential use, as determined by the Enforcement Officer.

**ENFORCEMENT OFFICER** – The Director of Pottstown Borough’s Licensing and Inspections Department or his or her designee.

**INDUSTRIAL UNIT** – Units primarily used or intended to be used for manufacturing, producing, processing, fabricating and/or assembly of raw goods, research or development in connection therewith, warehousing or bulk storage of goods and the sale of commodities to the general public when accessory to an industrial use. This term does include the sale of commodities to the general public through a warehouse club or similar use.

**INSTITUTIONAL UNIT** - Units owned or leased by public, private or not-for-profit organizations and which are primarily used or intended to be used to serve public benefit and community, such as an educational, religious, recreational, or historical uses.

## **NUISANCE**

1. Any public nuisance known at common law or in equity jurisprudence or as provided by the statutes, regulations, or ordinances of the Commonwealth of Pennsylvania, Montgomery County, or the Borough.
2. Any attractive nuisance known at common law or in equity jurisprudence or as provided by the statutes, regulations, or ordinances of the Commonwealth of Pennsylvania, Montgomery County, or the Borough.
3. Conditions that are in violation of this Part.

**OCCUPIED** – Commercial units where one or more owners conducts a lawful business on a permanent basis provided the unit is in compliance with all codes, unencumbered by municipal and tax liens, and not subject to pending mortgage foreclosure proceedings.

**OWNER** - Every person or legal entity, alone or severally with others:

1. With legal or equitable title to any unit;
2. With care, charge or control of any unit, in any capacity including but not limited to an agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title, and/or pursuant to a court order; and/or
3. Who is a mortgage lender or mortgagee for a unit subject to a mortgage which is in foreclosure.

**PERMANENT BASIS** – The regular, continuing operation of a business or other non-residential use exclusive of any temporary or seasonal closures.

**RESIDENTIAL UNIT** – Units owned or leased which serve or are intended to serve as someone’s permanent principal residence. This term does not include transient accommodations such as hotels, bed-and-breakfasts, and short-term vacation rentals.

**SECURED** – Any unit with a permanent door or window components, including frames, jambs, rails, stiles, muntins, mullions, panels, sashes, lights and panes intact and unbroken in each appropriate opening that is secured to deter vandalism and unauthorized entry and protect from weather damage. Units may also be temporarily boarded to prevent unauthorized entry and protect against weather damage.

**TEMPORARY** – The cessation of a commercial use for a specific, enunciated, and reasonable purpose lasting a limited time; typically, 60 days or less.

**UNIT** – Any confined space within a building. A building may contain a single unit or multiple units. A building shall be deemed to contain multiple, separate units when it contains confined spaces which are used independently from other confined

spaces, exclusive of shared common areas such as entrance ways, lobbies, stairwells, and hallways.

**UNSECURED** - Units which are not secured.

**VACANT** – Commercial units where no person or legal entity conducts a lawfully licensed business on a permanent basis. For the purposes of this chapter, rebuttable evidence of a vacancy is considered any condition that on its own, or in combination with other conditions, would lead a reasonable person to objectively believe the property is vacant. Such conditions may include, but are not be limited to, lack of activity on the site; low or no utility usage; accumulation of mail; lack of furniture, equipment or machinery; lack of window coverings; open accessibility; deferred maintenance or deteriorating buildings and structures; overgrown or dead vegetation; dumped refuse or rubbish; nuisances; boarded windows or doors; statements by neighbors, passersby, delivery agents or government agents; and/or use of the unit primarily for storage of products or materials.

**§ 1603 Security; Registration; Waiver.**

1. Security. All vacant commercial units shall be winterized and secured.
2. Registration. Vacant commercial units shall be registered at all times with Licensing and Inspections, and the owner of a vacant unit shall thereupon pay the fee required by § 1604 and file a registration statement for each applicable unit on forms provided by Licensing and Inspections.
  - A. Each registration statement shall be valid for one year. Registration of a vacant commercial unit shall be renewed on an annual basis, within ten (10) days of the date of expiration of the registration statement.
  - B. The following information and documentation shall be provided in or accompany the registration statement:
    - (1) Mailing address of the commercial unit.
    - (2) Names and addresses of all owners.
    - (3) Name of the responsible person to contact regarding building repairs and emergency conditions, along with his or her mailing address, email address, and direct access telephone number.
    - (4) If none of the owners reside within the Commonwealth of Pennsylvania, then the name, mailing address, email address, and direct access telephone number of a local agent who resides within the Commonwealth of Pennsylvania and is authorized to accept the services of process on behalf of the owner and who shall be designated as a responsible local party or agent, both for purposes of notification in the event

of an emergency affecting the public health, safety or welfare, and for the purposes of service of any and all notices as herein authorized.

- (5) A survey or plot plan of the lot
- (6) An interior plan of the unit depicting the layout of each floor.
- (7) The total floor area (measured in square footage) of the unit.
- (8) A list of any hazardous materials stored within the vacant commercial unit and copies of all the emergency services material safety data sheets (MSDS) or hazardous chemical inventory forms under the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) relevant thereto.
- (9) Any other information deemed necessary by the Enforcement Officer from time to time.

C. Inspections. Registration of a vacant commercial unit shall never be construed so as to exonerate the owner from any responsibility for achieving and maintaining compliance with applicable codes. The following minimum inspections will therefore be required for all registered units:

- (1) Initial Inspection. Upon each registration and renewal, the vacant commercial unit shall be inspected to confirm that the unit is winterized, secured, and in compliance with all codes. The owner shall permit a code compliance inspection of both the interior and exterior of the premises. The inspection shall include, but is not limited to, the following elements: habitability, building openings, roofs, drainage, building structure, foundation walls, building exterior, grounds, and walkways. The Enforcement Officer shall notify the owner of any deficiencies and required remediation in writing. Enforcement of any unremedied violations thereafter shall be pursued pursuant to and consistent with the enforcement and penalty provisions of those relevant codes.
- (2) Final Inspection. Prior to removal of a commercial unit from the registry, the owner shall submit to a final inspection by the Enforcement Officer intended to verify that the commercial unit is habitable and occupied and in compliance with all applicable codes. The Enforcement Officer shall notify the owner of any deficiencies and required remediation in writing. Enforcement of any unremedied violations thereafter shall be pursued pursuant to and consistent with the enforcement and penalty provisions of those relevant codes.

- D. **Obligation to Update Information.** The owner shall notify the Enforcement Officer within thirty (30) days of any change to the information contained in any relevant registration statement on file with the Borough.
- E. **Registration Fee.** No registration shall be deemed complete until the applicable fee is paid.
  - (1) **Annual Registration Fee.** A registration fee in accordance with the table below shall be imposed for a registration statement for each vacant commercial unit as well as for the renewal of such registration statement annually to cover the administrative cost of this program, including but not limited to inspecting and monitoring the premises by the Department of Licensing and Inspection and emergency services. The fees established herein may be amended hereafter by ordinance.

<b>Total Floor Area</b>	<b>Annual Registration Fee</b>
Less than 5,001 square feet	\$500
5,001 to 10,000 square feet	\$1,000
10,001 to 200,000 square feet	\$1,750
Over 200,000 square feet	\$2,500

- (2) If, following a final inspection required hereby, the registered commercial unit is determined by the Enforcement Officer to be habitable and legally occupied less than 180 days after registration or any renewal, the owner may receive a refund of 50% of the registration fee for that year. The fee will be refunded to the owner of the property at the time of the refund.

3. **Registration Waiver.**

- A. The owner of a vacant commercial unit may file for a limited waiver of the registration requirement contained in § 1603(A), above, if any of the following apply:
  - (1) The unit is undergoing an active renovation or rehabilitation.
  - (2) The unit is actively marketed for sale or lease.
  - (3) The unit is newly constructed; provided the unit is not vacant for more than one (1) year from the date of the issuance of a valid Use and Occupancy Certificate.
  - (4) The unit is approved by permit to be demolished; provided the unit is demolished within ninety (90) days of the issuance of the permit.

- B. No application for a waiver shall be deemed complete until the owner pays a non-refundable application review fee of \$85.00, which may be amended hereafter by resolution of Pottstown Borough Council.
- C. The denial of any waiver shall be timely communicated by the Enforcement Officer to the applicant in writing and note the nature of any deficiencies in the application, or substantive or otherwise. The applicant shall then be required to either perfect the application or register the vacant commercial unit within ten (10) days of the transmittal of the denial.

**§ 1604 Violations and Penalties.** Each violation of a section or subsection of this ordinance shall constitute a separate violation. Each day the violation persists shall then constitute a separate summary offense for which the maximum criminal fine of \$1,000 and/or a maximum term of imprisonment of ninety (90) days may be imposed upon conviction. For the enforcement of this ordinance or to correct any violation thereof, the Borough may also, or in the alternative, institute appropriate action or proceeding at law or equity. The offender shall also be assessed all court costs and be required to reimburse all attorneys' fees reasonably incurred by the Borough in association with securing a conviction and/or related to any other proceedings instituted pursuant hereto.

**SECTION 2. Severability.** If any sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any part of the remaining ordinance provisions, sentences, clauses, sections. It is the intent of the Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof, had not been included herein.

**SECTION 3. Reenactment.** All other parts of Chapter 5, Code Enforcement, of the Pottstown Borough Code of Ordinances, as amended, are hereby re-enacted and reordained and shall remain in effect as previously adopted.

**SECTION 4. Effective Date.** This ordinance is effective immediately upon enactment.

**ENACTED** and **ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

**THE BURGESS AND TOWN COUNCIL  
OF THE BOROUGH OF POTTSTOWN**

BY: \_\_\_\_\_  
Dan Weand, President

ATTEST: \_\_\_\_\_  
Virginia L. Takach, Secretary

Approved this \_\_\_ day of  
\_\_\_\_\_, A.D., 2022.

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Stephanie Henrick, Mayor