

ORDINANCE 2021-04

AN ORDINANCE CREATING CHAPTER 28 VACANT BUILDING REGULATION

WHEREAS, the City of Fairmont has determined that there is a need to address vacant buildings in the City.

NOW THEREFORE, the City of Fairmont does Ordain that Fairmont City Code, Chapter 28 is hereby created as follows:

Sec. 28-1. Purposes and findings.

- (a) The purpose of this chapter is to protect the public health, safety and welfare by establishing a program for the identification and regulation of vacant and abandoned buildings within the city. This section also determines the responsibilities of owners of vacant buildings and provides for administration, enforcement and penalties associated with the same.
- (b) The City Council finds that vacant buildings are a major cause and source of blight in residential and non-residential neighborhoods, especially when the owner or party responsible for a building fails to maintain and manage the building to ensure it does not become a liability to the neighborhood. Vacant buildings often attract transients, trespassers and criminals. Neglect of vacant buildings and the use of vacant buildings by transients and criminals creates a risk of fire, and other structural damage of the vacant building and adjacent properties. Vacant properties are often used as dumping grounds for junk and debris and are frequently overgrown with weeds and tall grass. Vacant buildings that are boarded to prevent entry by transients and other long-term vacancies are unsightly, discourage economic development and inhibit the increase of property values. There is a substantial cost to the city in monitoring vacant buildings. This cost should not be borne by the general taxpayers but should be borne by those who leave their buildings vacant.
- (c) Pursuant to authority provided in M.S. § 463.26, permitting cities to enact and enforce ordinances regarding hazardous buildings, and in order to enhance livability and preserve the tax base and property values of buildings within the city, and because of the need to assure that buildings which are capable of rehabilitation are promptly rehabilitated and buildings which are not capable of rehabilitation be promptly demolished, the city hereby declares that it is the policy of the city to promote rehabilitation of vacant and unoccupied buildings, and to assure a prompt process for demolition of hazardous buildings through a procedure fixing appropriate responsibility in accordance with due process requirements.

Sec. 28-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) **ABANDONED PROPERTY.** Property that: (1) has been substantially unoccupied or unused for any commercial or residential purpose for at least one year by a person with a

legal or equitable right to occupy the property; (2) has not been maintained; and (3) for which taxes have not been paid for at least two previous years.

(b) **BUILDING.** A roofed structure used or intended for supporting or sheltering any use or occupancy.

(c) **CITY.** The City of Fairmont, State of Minnesota.

(d) **COMPLIANCE OFFICIAL.** The City Administrator or the City Administrator's designee authorized to administer and enforce this section.

(e) **OWNER OF RECORD.** The fee owner, contract for deed vendee, mortgagee in foreclosure, holder of sheriff's certificate, and taxpayer as shown on the real property records of Martin County, or the authorized agent of any of the preceding persons.

(f) **RESPONSIBLE PARTY.** An owner, entity or person acting as an agent for the owner who has direct or indirect control or authority over the building or real property upon which the building is located or any party having a legal or equitable interest in the property, including but not limited to a realtor, service provider, mortgagor, leasing agent, management company or similar person or entity.

(g) **VACANT BUILDING.**

1. An abandoned building;
2. A building or a portion of a building that is open to entry by unauthorized persons without the use of tools or ladders;
3. Records of Martin County Recorder show the property is in lien foreclosure;
4. Windows or entrances to the property are boarded up or closed off, or multiple doors or windows are broken and unrepaired;
5. Doors to the property are damaged, smashed through, caved in, broken off, unhinged, or continuously unlocked;
6. The property is without gas, electric or water service;
7. Rubbish, trash, putrescible materials or debris has accumulated on the property;
8. Law enforcement agencies have received at least two reports of trespass, vandalism, or other illegal acts being committed on the property within 12 months, or;
9. The yards on the property exhibit grass, lawn, weeds and other vegetation which are not maintained to the standards prevailing in the neighborhood and/or city code.

(h) **UNOCCUPIED BUILDING.** Any building in or upon which no person resides consistent with its primary intended use for a period of 120 days or more.

Sec. 28-3. Securing vacant buildings.

Any building which becomes unsecured or vacant may be deemed hazardous. If the hazardous condition could be abated by securing the building, the City Council may order the building secured and shall cause notice of the order to be served by United States Mail on the record owner at its last known address. The notice must be in writing and must include, at a minimum, a statement that:

- (a) Informs the owner of record that it has ten days, from the date of the notice, to secure the building or provide the council with a reasonable plan and schedule to comply with the order and that costs may be assessed against the property if the person does not secure the building.
- (b) Provides the owner of record with a copy of right of entry by holder of mortgage or sheriff's certificate to protect the premises from waste and trespass.

Service by mail is complete upon mailing.

Sec. 28-4. Emergency securing of vacant buildings.

When the City Council or the Compliance Official determines that a vacant or unsecured building poses an immediate threat to the health or safety of persons in the community and the immediate securing of a building is required to protect health and safety, all notice requirements herein are waived and the building may be secured by the city, provided that:

- (a) The conditions showing the existence of an immediate threat are documented in a written report.
- (b) A copy of the written report and the city action taken are mailed immediately to the owner of record and any neighborhood association.
- (c) *Collection of costs.* All costs incurred by the city for securing a vacant building under this section may be charged against the real property.

Sec. 28-5. Vacant or unoccupied building registration.

- (a) Application.

1. The owner or responsible party shall register a vacant building or an unoccupied building with the city no later than 120 days after the building becomes vacant or unoccupied. The registration shall be submitted on a form provided by the city and shall include the following information supplied by the owner:

- a. The name, address, telephone number and email address of each owner and each owner's representative;
- b. The tax parcel identification number and street address of the premises on which the building is situated;
- c. The names, addresses, telephone numbers and email addresses of all known lien holders and all other parties with any legal interest in the building;

- d. The name, address, telephone number and email address of a local agent or person responsible for managing or maintaining the property;
- e. The status of water, sewer, natural gas, and electric utilities; and
- f. The date the building became vacant, the period of time the building is expected to remain vacant, and a property plan and timetable for returning the building to appropriate occupancy or use and correcting code violations and nuisances or for demolition of the building.

2. The owner shall notify the City within 30 days of changes in any of the information supplied as part of the vacant building registration and shall continue to do so on an ongoing basis during vacancy.

(b) Property plan. The property plan shall meet the following requirements:

1. *General provisions.* The plan shall comply with all applicable regulations and meet the approval of the City. It shall contain a timetable regarding use or demolition of the property. The plan shall be completed within 30 days after the building is registered.

2. *Maintenance of building.* The plan shall identify the means and timetable for addressing all maintenance and nuisance-related items identified in the application. Any repairs, improvements or alterations to the property shall comply with building code provisions and applicable city regulations.

3. *Plan changes.* If the property plan or timetable for the vacant building is revised in any way for any purpose, the revisions shall meet the approval of the City.

4. *Demolition required.* If a building has remained a vacant building for a period of 365 consecutive days or more, and the City has not approved an alternative schedule in the property plan, the city may declare the building to be a nuisance and direct the owner to demolish the building and restore the grounds. If the owner does not demolish the building and thereby eliminate the nuisance conditions, the city may commence abatement and cost recovery proceedings for the abatement of the violation.

(c) Noncompliance and notification. If the owner does not comply with the property plan, or maintain or correct nuisance violations, the city may commence abatement and recover its costs for correction of those items. In the case of an absent owner and ongoing nuisance issues, the city need not provide notice of each abatement act to the owner. A single notice by the city to the owner is determined to be sufficient notice that it intends to provide ongoing abatement until the owner corrects the violations.

(d) Exemptions.

1. *Casualty damage.* A building that has suffered casualty damage is exempt for the registration requirement for a period of 180 days after the date of the casualty event if the owner submits a request for exemption in writing to the City. An

exemption request for review by the City shall include the following information supplied by the owner:

- a. A description of the premises;
- b. The name and address of owner or owners;
- c. A statement of intent to repair and reoccupy the building in an expeditious manner and the time frame for completion; and
- d. Actions the owner will take to ensure the property does not become a nuisance.

2. *Snowbirds*. Those persons who leave their residential buildings on a temporary (six months or less) for vacation purposes or to reside elsewhere during the winter season and have the intent to return are exempt from the registration requirement.

(e) Fees. The owner shall pay an annual registration fee. The registration fee will be an amount adopted by ordinance by the City Council. The amount of the registration fee shall be reasonably related to the administrative costs for registering and processing the registration form and for the costs of the city in monitoring the vacant building site. The fee shall be paid in full prior to the issuance of any building permits or licenses, with the exception of a demolition permit.

(f) Assessment. If the registration fee or any portion thereof is not paid within 60 days after billing or within 60 days after any appeal becomes final, the City Council may certify the unpaid fees against the property.

(g) Issuance of registration. Upon completion of the registration process and payment of the fee, the city will issue a vacant building registration to the owner. The owner shall securely post the registration on the vacant building on a side entrance door, where possible, that is not generally visible from the public street. If no side entrance door is available, the registration shall be securely posted on another available entrance door.

(h) Failure to register. If the property is abandoned or the owner or responsible party fails to complete the registration process, the property will be registered administratively as a vacant property and the registration fee shall be assessed against the property.

Sec. 28-6. Change of ownership.

A new owner shall register or re-register a vacant building or unoccupied building within ten days of any transfer of an ownership interest in a vacant building. The new owner shall comply with the approved property plan and timetable submitted by the previous owner or shall submit a revised or amended property plan to the City for review and approval. For the purposes of this section, the new owner is an owner as defined in this section if the new owner has purchased the vacant building since its registration by the previous owner or has otherwise succeeded to all rights of the previous owner.

Sec. 28-7. Inspections.

The City may conduct inspections on any vacant building or unoccupied building in the city for the purpose of enforcing and ensuring compliance with this section and other applicable regulations. Upon the request of the City, an owner or responsible party shall provide access to all interior portions of the building and the exterior of the property in order to complete an inspection. If the owner or responsible party is not available, is unresponsive, or refuses to provide access to the interior of the building, the city may use any legal means to gain entrance to the building for inspection purposes. Prior to any re-occupancy, the owner or responsible party shall request an inspection of the vacant building by the City to determine compliance with this chapter and all other applicable regulations. All application and re-inspection fees also shall be paid prior to building occupancy.

Sec. 28-8. Maintenance of vacant buildings and unoccupied buildings.

The owner of a vacant building or unoccupied building shall comply with and address the following items in the property plan:

(a) *Appearance.* All buildings shall be maintained and kept so that they appear to be occupied.

(b) *Securing.* All buildings shall be secured from the outside entry by unauthorized persons or pests. Security shall be ensured by normal building amenities such as windows and doors having adequate strength to resist intrusion. All doors and windows shall remain locked. There shall be at least one operable door into every building and into each dwelling unit. Exterior walls and roofs shall remain intact without holes.

1. *Architectural (cosmetic) structural panels.* Architectural structural panels may be used to secure windows, doors and other openings provided they are cut to fit the opening and match the characteristics of the building. Architectural panels may be of exterior grade-finished plywood or Medium Density Overlaid plywood (MDO) that is painted to match the building exterior or covered with a reflective material such as plexiglass to simulate windows.

2. *Temporary securing.* Untreated, exterior grade (CDX) plywood or similar structural panels may be used to secure windows, doors, and other openings for a maximum period of 90 days.

3. *Emergency securing.* The City may take immediate steps to secure a vacant building in emergency circumstances.

(c) *Fire safety.*

1. *Fire protection systems.* Owners of non-residential buildings shall maintain all fire protection systems, appliances and assemblies in operating condition and maintain underwriter laboratories (UL) monitoring of all systems.

2. *Removal of hazardous and combustible materials.* The owner of any building shall remove all hazardous material and hazardous refuse that could constitute a fire hazard or contribute to the spread of fire.

(d) *Plumbing fixtures.* Plumbing fixtures connected to an approved water system, an approved sewage system, or an approved natural gas utility system shall be installed in accordance with applicable codes and be maintained in sound condition and good repair or removed and the service terminated in the manner prescribed by applicable codes. The building's water systems shall be protected from freezing.

(e) *Electrical.* Electrical service lines, wiring, outlets, or fixtures not installed or maintained in accordance with applicable codes shall be repaired, removed or the electrical services terminated to the building in accordance with applicable codes.

(f) *Lighting.* All exterior lighting fixtures shall be maintained in good repair, and illumination shall be provided to the building and all walkways in the same manner as provided at the time the building was last occupied or as otherwise provided in the approved vacant building plan.

(g) *Heating.* Heating facilities or heating equipment in vacant buildings shall be removed, rendered inoperable, or maintained in accordance with applicable codes.

(h) *Termination of utilities.* The City may require the water, sewer, electricity, or gas service to the building be terminated or disconnected. Prior to the termination of any utility service, the city will provide written notice to the owner. No utility may be restored until consent is given by the City. Utilities may be disconnected at the request of the owner or responsible party as part of the approved building property plan. The City may authorize immediate termination of utilities in emergency circumstances and provide subsequent notice to the owner or responsible party.

(i) *Signs.* On non-residential properties, obsolete or unused exterior signs and installation hardware shall be removed. Holes and penetrations shall be properly patched and painted to match the building. Surfaces beneath the signs that do not match the building shall be repaired, resurfaced, painted or otherwise altered to be compatible with the building surfaces. All signs remaining on the property shall be maintained in good condition and comply with the provisions of this code.

(j) *Exterior maintenance.* The owner shall comply with all applicable property maintenance regulations and city codes including, but not limited to, the following:

1. *Nuisances.* The owner shall eliminate any activity on the property that constitutes a nuisance as defined by this code or state statute.

2. *Grass and weeds.* Any weeds or grass shall be maintained at a height of no greater than six (6) inches and in accordance with city code.

3. *Exterior structure maintenance.* The owner shall maintain the vacant building in a manner so that it does not constitute a nuisance or as otherwise determined to be necessary by the City to protect public health and safety.

4. *Abandoned or junk vehicles.* The owner shall keep the property free of unlicensed, inoperable, abandoned or junk vehicles. The city may cause such vehicles to be removed.

5. *Animals.* The owner shall ensure that all animals, including domestic, exotic and feral, are removed from the property and handled in a humane manner.

6. *Diseased, dead or hazardous trees.* The owner shall remove diseased, dead or hazardous trees or branches from the property as required for public health and safety.

7. *Graffiti.* The owner shall keep the property free from graffiti.

8. *Abandoned pools.* Swimming pools shall be covered and secured to prevent accidental entry, treated to prevent pest harborage, and properly drained and winterized.

(k) *Removal of garbage and refuse.* The owner of any building shall keep the building and property free of all junk and refuse pursuant to city code or otherwise in accordance with public health and safety.

(l) *Police protection systems.* All alarm systems in any building or portion thereof shall be maintained in operating condition.

(m) *Loitering, criminal activities.* Loitering or engaging in criminal activities is prohibited in the building or on the real property upon which the building is located. The owner or responsible party shall not allow these activities and shall take immediate actions to eliminate these conditions upon notification by the city or upon discovery.

(n) *Emergency abatement.* The City may authorize immediate abatement of any public nuisance or correction of any maintenance item if the City determines that conditions exist that present an imminent threat to the public health and safety.

(o) *Other codes.* The property owner or responsible party shall comply with all other city codes and applicable regulations.

Sec. 28-9. No occupancy or trespass.

No person may trespass, occupy or reside, on a temporary or permanent basis, in any vacant or unoccupied building, registered or not, without the owner's consent.

Sec. 28-10. Vandalism or removal of items prohibited.

No person may damage or remove items from a vacant or unoccupied building or the property upon which it is located, including, but not limited to, appliances, fixtures, electrical wiring, copper, or other similar items without the owner's consent.

Sec. 28-11. Appeal.

Any person or responsible party aggrieved by a decision rendered under this chapter by the City may appeal to the City Council. The appeal shall be made in writing, shall specify the grounds for the appeal and shall be submitted to the City Clerk's office with the required filing fee, not exceeding ten days from the date of mailing of the decision that is basis of the appeal.

Sec. 28-12. Penalty.

Any person or responsible party who violates the provisions of this chapter is guilty of a misdemeanor. Nothing in this section, however, is deemed to limit other remedies or civil penalties available to the city under this code or state law as they may be amended from time to time.

PASSED, APPROVED AND ADOPTED, this 11th day of October 2021.

Motion by: Council Member Lubenow
Seconded by: Council Member Miller
All in favor: Council Members Miller, Peters, Hasek, Kawecki and Lubenow
Opposed: None
Abstained: None
Absent: None


Deborah J. Foster, Mayor

ATTEST:


Patricia J. Monsen, City Clerk

1st Reading: September 27, 2021
2nd Reading: October 11, 2021