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PROPOSED ORDINANCE TEXT

TO: Medford City Council
FROM: Medford City Councilor Justin Tseng, Erin Yu, Melody Wang, & Otto Barenberg
DATE: Thursday, January 22, 2025
RE: Proposed Vacant Properties Ordinance Draft

CHAPTER 94 - Sec 95-7.5 is hereby removed.

CHAPTER 10 – BUILDINGS AND BUILDING REGULATIONS

ARTICLE VIII. - Vacant and foreclosing properties.

10-118 Purpose and Findings.

1. Whereas among other things, Vacant Commercial Properties and Vacant Industrial Properties can degrade the vitality of Medford's commercial districts, frustrate local planning and development efforts, create increased specific risks of fire damage, vandalism and unlawful entry or uses, and give rise to other public health and safety hazards, this section is intended to promote the City's public welfare and economic health by requiring all property owners to register and properly maintain vacant or foreclosing commercial and industrial properties.
2. It is the intent of this section to protect the health, safety, welfare and economic vitality of the City of Medford and its residents by protecting property values, maintaining neighborhood integrity and accessibility, safeguarding against property blight, protecting City resources and ensuring the safe and sanitary maintenance of Vacant Properties.
3. Furthermore, it is the intent of this section to use the monies raised by the fees set forth in this section to:
 - a. Establish, develop, and maintain an online registry of Vacant Properties s in Medford to reflect current vacancies,

- b. Conduct the inspections provided for in this section,
- c. Provide an administration appeal process for any person aggrieved by the requirements of this section, and
- d. Mitigate negative effects of vacant or foreclosing properties on the health, safety, welfare and economic vitality of the city and its residents.

10-119 Definitions.

- 1. The terms used in this Section shall have the meanings indicated in Section 94-12.0 of the Medford Municipal Code.
- 2. For purposes of this Section only, the following terms shall be defined as follows:

Commercial Property: A property containing a Building or portion thereof used within the past three (3) years for a period of no less than thirty (30) days for:

- 1. Commercial Uses as indicated in the Table of Use and Parking Regulations in Chapter 94 of the Medford Code of Ordinances, or
- 2. Retail and Service Uses as indicated in the Table of Use and Parking Regulations in Chapter 94 of the Medford Code of Ordinances.

Community Event: Temporary or interim use of a Vacant Commercial Property or Vacant Industrial Property for a public or semi-public purpose as determined by the Planning, Development, and Sustainability Director or their designee.

Foreclosing Property: A property undergoing a legal proceeding to terminate a mortgagor's interest in property instituted by the mortgagee and regulated under M.G.L. ch. 244.

Foreclosing Commercial Property: Any building that meets both the definitions of Foreclosing Property and Commercial Property in this section.

Foreclosing Industrial Property: Any building that meets both the definitions of Foreclosing Property and Industrial Property in this section.

Industrial Property: A property used within the past three (3) years for a period of no less than thirty (30) days for Wholesale, Transportation Uses or Office Uses as indicated in the Table of Use and Parking Regulations in Chapter 94 of the Medford Code of Ordinances.

Owner: A person or entity who, alone or severally with others:

1. Has legal or equitable title to any Vacant Property or has care, charge or control of any Vacant Property in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the holder of legal title; or
2. Is a tenant with a legal right to possess a part of or the entire Vacant Property; or
3. Is a mortgagee in possession of any Vacant Property; or
4. Is an agent, trustee, receiver or other person appointed by the courts and vested with possession or control of a Vacant Property; or
5. Is an officer or trustee of an association of unit owners of a condominium or cooperative which contains a Vacant Property.

Public Art: Works of art for public benefit and viewing approved by the Planning, Developing, and Sustainability Director or their designee for temporary display inside storefront windows or upon other safe, visible exterior surfaces of Vacant Properties.

Vacant Property: Any unoccupied real property which:

1. Is not legally occupied, is abandoned, or is not used for a period of at least ninety (90) consecutive days by occupants having custody or legal right of entry to such property who do not intend to continue to use the property; or
2. Is intermittently occupied by persons with legal right of entry, but exhibits in the opinion of the Building Inspector dilapidated walls, roof, or doors which fail to prevent the entry of a trespasser for a period of more than seven (7) days.

This definition shall exclude new constructions, including significant improvements, as determined by the Building Commissioner. New constructions shall include any construction of a structure on a vacant lot or any construction which involves demolition of more than 50% (fifty percent) of the building shell exclusive of demolition of a single story attached garage. For purposes of calculating the percentages of any demolition under this definition, all demolition shall be taken into account which commenced, or could have commenced, pursuant to an issued permit within two (2) years prior to the

date of any request for any permit to construct, re-construct, alter, add, extend or otherwise structurally change any structure.

Vacant Commercial Property: Any building which meets both the definitions of Vacant Property and Commercial Property in this section.

Vacant Industrial Property: Any building which meets both the definitions of Vacant Property and Industrial Property in this section.

10-120 Registration of Vacant Commercial and Vacant Industrial Properties; Notice of Foreclosure.

1. Prior to, but not more than ninety (90) days after any property, or portion of a property, becomes a Vacant Commercial Property or Vacant Industrial Property, Foreclosing Commercial Property, or a Foreclosing Industrial Property, the owner(s) shall register the property with the City utilizing a form promulgated by the Building Commissioner or their designee which shall, at a minimum, include the following criteria:
 - a. The owner's name, address (which may not be a post office box), telephone number and secondary telephone number designated by phone type;
 - b. Property street number;
 - c. Storefront status (vacant, leased, or sold to another owner);
 - d. Property type and use;
 - e. Square footage;
 - f. The name, phone number, and 24 hour contact information, and local mailing address of any property manager or property management company, if applicable;
 - g. A statement as to whether the Building is currently a Vacant Property and if not, the date upon which the Building will become a Vacant Property ; and
 - h. A statement as to whether the Building is currently a Foreclosing Property and if not, the date upon which the Building will become a Foreclosing Property;
 - i. A certification, as determined by the building commissioner, that the property was inspected by the owner or agent;
 - j. Clear photographs of interior rooms and any street-facing exteriors.

2. If the property is a Vacant Commercial Property or Vacant Industrial Property, the owner or agent shall designate and retain a local individual or local property management company responsible for securing and maintaining the property.
3. If the property is in the process of foreclosure, as defined and regulated by M.G.L. ch. 244, then the registration shall be filed within seven days of the initiation of the foreclosure process . If the commissioner determines that the property is vacant and that foreclosure proceedings have not been initiated, the registration must be received within 14 days of the commissioner's first citation for improper maintenance.
4. All property registrations are valid for one calendar year. An annual registration fee as determined by section 94-7.5.4 shall accompany the registration form. Subsequent annual registrations and fees are due at least thirty (30) days prior to the expiration of the previous registration and must certify whether the Vacant Commercial Property, Foreclosing Commercial Property, Vacant Industrial Property, or Foreclosing Industrial Property remains vacant or foreclosed.
5. If or when the Property is no longer a Vacant Property, the owner must provide proof of sale or written notice and proof of occupancy to the Building Commissioner. Upon the sale of the property, the timelines outlined in the ordinance shall reset.
6. If the property containing a Vacant Property is conveyed to a third party, the owner must provide proof of sale or written notice and proof of occupancy to the Building Commissioner.
7. The Building Commissioner or their designees shall maintain a registry of all Vacant Properties registered with the City under this Section on the City website. This registry shall include a listing of any approved uses for the Vacant Property as determined by other sections of the Code.

10-121 Annual Registration Permit Fee for Vacant Commercial Properties and Vacant Industrial Properties, Waiver.

1. Upon registering a Vacant Commercial Property or a Vacant Industrial Property as required by this section, the Owner shall pay the City through the Building Commissioner a non-refundable registration permit fee of \$1,000 for the calendar year in which the Building becomes a Vacant Commercial Property or a Vacant Industrial Property. The registration permit fee for each successive year the Building remains a Vacant Commercial Property or a Vacant Industrial Property shall be paid upon re-application. The charges for subsequent years

shall be as follows: Year 2 \$2,000; Year 3 and each subsequent year \$3,000 and shall be paid at least thirty (30) days prior to the expiration of the previous registration.

2. The amount of the annual registration permit fee may be amended by the City Council, and the Building Commissioner and Planning, Development, and Sustainability Director may, from time to time, submit proposals to reassess the fee.

Owners may apply for a partial or full waiver of the annual registration permit fee at the time the Vacant Commercial Property or the Vacant Industrial Property is registered on a form promulgated by the Building Department, which shall be renewed on an annual basis at the time the invoice for the annual permit registration fee is received by the owner. All requests and applications for waivers are due either (i) prior to, but not more than ninety (90) days after any property becomes a Vacant Commercial Property or Vacant Industrial Property, or (ii) at least thirty (30) days prior to the expiration of the previous waiver. A waiver of the annual registration permit fee may be allowed by the Building Commissioner or their designee, after consultation with any other relevant departments upon a showing of clear and convincing evidence of:

- a. A substantial financial hardship, which shall be granted only when the applicant demonstrates that payment of the registration permit fee would cause the applicant a substantial financial hardship and no other form of waiver is available to the applicant.
- b. A written agreement to display Public Art as defined in Section 94-7.5.2, which shall be granted only when sufficient public viewing of the public art display is available; the Vacant Property is an appropriate location for such display; and the proposal for the public art display has been reviewed and approved by the Planning, Development, and Sustainability Department, the artist, and the owner. Terms of the exhibition shall be set forth in a written agreement promulgated by the Planning, Development, and Sustainability Department;
- c. A plan to use the property for Community Events as defined in Section 94-7.5.2, which shall be granted only when the applicant must provide documentation of a space usage plan for this purpose where the Vacant Commercial Property or the Vacant Industrial Property, or an accessory structure or an accessory parking area as defined in Section 94-12.0, is occupied for Community Events for at least three days in a three month period. This shall include any agreements with the City or Community Event organizers, schedules, and permits to the Building Department deemed necessary by the Building Commissioner; or by

- d. A demonstration that the Vacant Commercial Property or a Vacant Industrial Property is being improved for future use, which shall be reviewed by the Building Commissioner. Any building with an active building permit or application to the planning board shall be exempt from this section.
3. The Building Commissioner and Planning, Development, and Sustainability Director may also issue a waiver on the basis of pending amendments to the Zoning Code or the Medford Comprehensive Plan.
4. A Vacant Commercial Property or Vacant Industrial Property that has been condemned in accordance with M.G.L. ch. 143, § 9 or a like statute shall not be eligible for the Public Art or Community Benefits waivers to the annual registration permit fee.
5. Requests for waivers of the annual permit registration fee shall be acted upon by the Building Commissioner or their designee within thirty (30) days of request for such waiver. Approval or denial of such waivers shall be in writing, explaining the basis for the approval or denial. If the waiver is denied, the annual registration permit fee shall be paid within thirty (30) calendar days of such denial.
6. An owner may appeal the rejection of a waiver through the process defined at Section 94-7.5.8.

10-122 Maintenance Requirements for All Vacant Properties.

1. Notwithstanding anything in this ordinance to the contrary, the owner of a Vacant Property shall maintain the Vacant Property in accordance with all applicable state and municipal sanitary codes, building codes, laws, regulations and ordinances. The owner, local individual or local property management company shall inspect and maintain the property on a monthly basis for the duration of the vacancy.
 - a. The name and 24-hour contact phone number of the local individual or property management company responsible for maintenance shall be affixed to the property. This sign shall be posted on the front of the property.
 - b. The owner of a Vacant Property shall promptly repair all broken windows, doors, other openings, and any unsafe conditions at the Vacant Property. Boarding of open or broken windows and doors is prohibited except as a temporary measure allowed by city ordinance, unless the Building Commissioner or Health Director as the case may be, determines that, due to vandalism, security reasons, public health or circumstances out of the owner's control, the proper boarding of windows and doors is necessary.

Boards or coverings must be fitted to the opening size and colored to blend with the existing building color scheme.

- c. The owner of a Vacant Property must maintain the property free from rats, mice, and other vectors. Upon registration with the city, the owner must provide the Health Director with either a letter or other certification from a Massachusetts state licensed exterminator stating that the inside and outside of the property has been inspected and found to be free from moderate to severe rodent activity, or documentation that rodent activity or infestation has been discovered and appropriate baiting or other abatement measures have occurred or will occur within thirty days of registration. These abatement measures must take place for a period of at least two (2) weeks, or until rodent activity on the property has ceased, whichever time period is longer. Six (6) months after this initial inspection, and every six months thereafter while the property remains vacant, the owner must provide the Health Director with documentation that the property has been re-inspected and either found to be free from rodent activity or that appropriate abatement measures have been taken, as defined above. All windows, doors, exterior walls, foundations, basements, cellars, crawlspaces, and interior spaces on the property shall be maintained in a sound condition, free from cracks, holes, breaks, gaps, loose boards, and all other conditions that allow for rodent entry and harborage on the property. The property shall remain free from all dead or overgrown vegetation, junk, trash, lumber, boxes, and large debris, or any material that may provide food or harborage for rodents. Maintenance shall comply with the process and permits outlined in the Integrated Pest Management Plan of the Board of Health.
 - d. The owner of a Vacant Property shall maintain the Vacant Property and land on which it is located for the duration of its existence as a Vacant Property in a condition so that the Vacant Property does not appear to a reasonable person to be unused or vacant. Upon notice by the Building Commissioner, any accumulated trash and/or graffiti shall be removed from the Vacant Property or property by the Owner within seven (7) days.
2. Compliance with this section does not relieve the owner of any applicable obligations set forth in city ordinances or regulations, covenant conditions and restrictions, and/or homeowners' association rules and regulations.

3. The owner of a Vacant Property may display advertising materials in the vacant space or in the Vacant Property's street-facing windows in accordance with the sign ordinance and other provisions of Section 94 of the Code of Ordinances.
4. The Building Commissioner may direct the shutting off, cutting, or capping of utilities serving any building which is a Vacant Property for a period exceeding six (6) months if deemed necessary to preserve public safety. The Building Commissioner shall direct the restoration of utility services for the purpose of Community Events.
5. If the Building Commissioner determines a building to be unsafe, the Building Commissioner may act immediately in accordance with the Massachusetts State Building Code and other applicable codes or laws to protect public safety. Furthermore, nothing in this section shall abrogate the powers and/or duties of municipal officials to act pursuant to any general statutory authority including, without limitation, M.G.L. c. 139, § 1 et seq. and M.G.L. c. 143, § 6 et seq.

10-123 Inspections.

The Building Commissioner, Police Chief, Fire Chief, and the Health Director, or their designees, shall have the authority to periodically inspect and shall inspect on a quarterly basis, the exterior and interior of any properties subject to this section for compliance with this section and other laws, regulations and ordinances relating to the health, safety and welfare of the citizens of Medford. They shall also have the authority to issue separate citations for any violations of those laws, regulations and ordinances.

10-124 Violations and Penalties; Enforcement.

1. The Building Commissioner or Health Director or their designees acting as Code Enforcement Officers are authorized to administer and enforce this section.
2. This section shall be enforced in the manner provided in Section 1-13 of the Medford Code of Ordinances and M.G.L. ch. 40, § 21D. Any property owner who violates any provision of this section shall be subject to the following penalties:
 - a. Failure to register with the Building Commissioner under Section 94.7.5.3 shall be considered a violation of this section and is punishable by a fine of \$300.00. Each day that such violation continues shall constitute a separate offense. Registration under Section 94.7.5.3 shall constitute a remedy for this violation.

- b. Failure to identify the local individual or local property management company if deemed applicable by the Building Commissioner under Section 94.7.5.3 shall be considered a violation of this section and is punishable by a fine of \$300.00. Each day that such violation continues shall constitute a separate offense. Such identification under Section 94.7.5.3 shall constitute a remedy for this violation.
 - c. Failure to provide proof of sale or written notice and proof of occupancy to the Building Commissioner if or when the Building is no longer a Vacant Property under Section 94.7.5.3 shall be considered a violation of this section and is punishable by a fine of \$300.00. Each day that such violation continues shall constitute a separate offense. Providing such proof under Section 94.7.5.3 shall constitute a remedy for this violation.
 - d. Failure to provide proof of sale or written notice and proof of occupancy to the Building Commissioner if the property containing a Vacant Property is conveyed to a third party under Section 94.7.5.3 shall be considered a violation of this section and is punishable by a fine of \$300.00. Each day that such violation continues shall constitute a separate offense. Providing such proof under Section 94.7.5.3 shall constitute a remedy for this violation.
 - e. Failure to pay the annual registration permit fee to the Building Commissioner to the Building Commissioner under Section 94.7.5.4 shall be a violation of this section and is punishable by a fine of \$300.00. Payment of the fee under Section 94.7.5.4 shall constitute a remedy for this violation.
 - f. Failure to maintain the property under Section 94.7.5.5 shall be considered a violation of this section and is punishable by a fine of \$300.00. Each day that such violation continues shall be considered a separate offense. Compliance with maintenance requirements under Section 94.7.5.5 shall constitute a remedy for this violation.
- 3. Nothing in this section shall abrogate the powers and/or duties of municipal officials to issue fines pursuant to any general statutory authority or any other law, code, or ordinance.
 - 4. Except where public safety is at issue, any owner found to be in violation of this section shall receive a written notice on a form promulgated by the Building Commissioner providing the owner notice of the violation and the amount of the fine.
 - 5. Fines shall be due at least twenty-one days after the date of such notice as promulgated by the Building Commissioner in Section 94-7.5.7.4.

6. The Building Commissioner shall afford a minimum of seven (7) days to remedy all violations prior to the levying of registration fees, fines or initiation of any enforcement action.
7. Any fee assessed or fines issued or levied under this section shall constitute a "municipal charges lien" on the Vacant Property, to be collected in accordance with M.G.L. c. 40, § 58.
8. The officer enforcing a particular penalty may waive any fine assessed under this section in total or in part upon the abatement of the violation(s). If a lien has been placed on the Vacant Property as the result of a fine, the City shall work with the tax collector to remove such lien, if it is determined the violations have been addressed and all or part of the fine has been waived as provided for herein.

10-125 Appeal.

Any person aggrieved by the requirements of this section may seek an administrative appeal by making a written application to the Building Department. The written application must be filed with the Building Department within thirty (30) days of the imposition of an order or penalty pursuant to Section 94-11.4.2. The Building Department may designate a member of their staff to hear appeals pursuant to this section. Any person aggrieved by a final decision issued under this section may seek relief in any court of competent jurisdiction as provided by the laws of the commonwealth. Any appeal made shall be requested in writing within thirty (30) days of the date of the decision.

10-126 Regulations.

The Building Commissioner shall have the authority to promulgate rules and regulations necessary to implement and enforce this section.

10-127. Compliance with Other Laws; Severability.

1. Compliance with this Section shall not relieve the owner of any obligations set forth in any other applicable statutes, ordinances, regulations, codes, covenant conditions or restrictions and/or association rules and regulations. In the event of a conflict, the stricter of the rules and regulations shall apply.
2. If any provision of this Section is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect.

10-128. Date of Effect.

This section shall take effect 365 days after its passage.