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NOTICE OF MEETING

CITY COUNCIL

Joe Frank
President
Sara Continenza
Chanell Elston
Jane Goodman
Ruth Gray
Susan Hardy
Justin Tisdale

MEETING OF: **ZONING & PLANNING
COMMITTEE MEETING**

CALLED BY: RUTH GRAY, CHAIR

DATE: **October 12, 2020**

LOCATION: COMMITTEE/JURY ROOM

TIME: 7:00 P.M.

RE: ORD. 13-19 Dark Store Ordinance

COMMITTEE/COUNCIL MEMBERS:

CHANELL ELSTON
JANE GOODMAN

MEMBERS OF COUNCIL:

SARA CONTINENZA
JOE FRANK
JANE GOODMAN
SUSAN HARDY

ADMINISTRATION

LAURA HEILMAN, BUILDING COMMISSIONER
MIKE LOVE, ECON. DEVELOPMENT DIRECTOR
KEITH BENJAMIN, COMM. SERVICES DIRECTOR

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 13-19
INTRODUCED BY: Fiorelli
REQUESTED BY: Planning Commission

July 8, 2019

AN ORDINANCE

CREATING NEW CHAPTER 1336 "REGISTRATION AND MAINTENANCE OF VACANT NONRESIDENTIAL PROPERTIES AND ESTABLISHMENTS" OF TITLE FIVE "OTHER BUILDING PROVISIONS" OF PART THIRTEEN "BUILDING CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, in order to encourage vibrant commercial districts and reduce vacancy rates, the Planning Commission and City Council desire to implement a vacant nonresidential building registration and maintenance program; and

WHEREAS, in light of the harm to neighborhood safety, security and welfare caused by prolonged neglect and abandonment of vacant nonresidential buildings, there is a need for a program to identify and make swift contact with all persons with a legal interest in a vacant property to ensure that vacant buildings are maintained free of nuisance conditions; and

WHEREAS, it is critical to use all available tools to ensure nonresidential property owners are diligently working to ensure their properties are reoccupied or repurposed; and

WHEREAS, the Planning Commission, by a vote of 5-0-0 on June 27, 2019, has recommended to City Council this Ordinance be adopted and Council deems that this Ordinance is necessary for the public health, safety, and welfare of the City.

NOW THEREFORE BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That new Chapter 1336 "Registration and Maintenance of Vacant Nonresidential Properties and Establishments" of Title Five "Other Building Provisions" of Part Thirteen "Building Code" of the Codified Ordinances of the City of South Euclid, Ohio be hereby created and read as follows:

CHAPTER 1336 REGISTRATION AND MAINTENANCE OF VACANT NONRESIDENTIAL PROPERTIES AND ESTABLISHMENTS.

1336.01 PURPOSE

(a) This chapter shall apply to any nonresidential property, as defined below, or unit of nonresidential property in the city which meets the definition of vacant and unoccupied.

1336.02 DEFINITIONS

(a) "Nonresidential Property" shall be defined as a property with an assigned use classification of commercial, institutional, industrial, or office.

(b) "Vacant, Vacant Building, Vacancy, and Vacant Unit of a Building" shall be defined for the purposes of this chapter, as a building, or unit of a building, which is not occupied by its owner, lessee or other person in lawful possession, or at which substantially all lawful business operations have ceased.

(c) "Unoccupied" shall be defined for the purposes of this chapter as a building or unit of a building in which all lawful business operations have ceased.

1336.03 DUTIES OF OWNER

(a) The owner, lessee, or party in control of any vacant building and/or vacant unit of a building, or a party that has filed and is currently maintaining an open foreclosure action regarding a vacant building shall maintain the vacant building and/or vacant unit of a

building in compliance with city codes with particular attention to the following:

1. Grass and weeds shall be kept at a maximum height of 6 inches. Shrubbery must be kept trimmed and neat and kept from encroaching on or touching the building.
2. All building exteriors shall have adequate weather-tight protection, including paint, siding, and or similar finishes maintained in good condition.
3. All buildings and grounds must be secured against trespassers and rodents. This includes maintaining all exterior doors, windows and yard fencing in a good and secured condition. No boards, plywood or similar means or materials may be used to secure windows and doors. Doors, and/or windows that are found to be defective shall be replaced with similar, new doors or window units equipped with locking hardware. Property must be properly winterized.
4. Roofs on all buildings shall be in good, weather tight condition with no leakage.
5. Any accumulated trash or debris must be removed from the property immediately.
6. Graffiti, tagging or similar markings must be immediately removed or painted over with an exterior grade paint that matches the exterior color of the structure.
7. Property shall be maintained free of nuisance conditions.
8. Compliance with this section does not relieve the owner or agent in control of the property of any obligations set forth in any covenants, conditions, restrictions, homeowners' association rules and regulations and/or codified ordinances or building codes which may apply to the property.

(b) REGISTRATION REQUIRED

1. The owner, agent, lessee, or party in control of any vacant building and/or vacant unit of a building, or a party that has filed a foreclosure action that is currently pending regarding any vacant building, shall register the building, property and/or vacant unit of a building with the Building Commissioner, and maintain the registration up to date.
2. An application for registration of a vacant building and/or vacant unit of a building shall include all of the following information on forms provided by the City:
 - a. The name of the owner, agent lessee or party in control of the property and/or foreclosing entity submitting the registration application;
 - b. The direct mailing address of the applicant; P.O. Boxes are not an acceptable address;
 - c. A contact name, telephone number and e-mail address for the applicant;
 - d. In the case of an applicant whose home or business address is located outside Cuyahoga County, the applicant shall provide the name and mailing address as well as the contact name, telephone number and e-mail address of the person responsible for the security, maintenance, and marketing of the property.
 - e. The fee required by Section 1336.03(b)(5).
3. Registration shall remain valid for twelve months from the date of issuance. The owner, agent, lessee or party in control, or party mortgagee in a foreclosure action, shall renew the registration upon expiration for as long as the building, property, and/or unit of a building remains vacant.
4. The owner, agent, lessee, party in control, or party in a foreclosure action of any vacant building property, and/or vacant unit of a building, shall inspect the building, property and/or unit at least one time each month on the interior and exterior of the to verify that the requirements of this Chapter, the Codified Ordinances of the City, and any other applicable laws are being met. A written report of such inspections shall be provided to the City upon request.
5. Fees: The annual fee for registering a vacant building, property and/or vacant unit of a building shall be \$0.15 per square foot of vacant space.

(c) EXEMPTIONS:

Waivers exempting compliance with the provisions of this Chapter shall be obtained in writing on a form provided by the City under the following circumstances as long as the property is kept in safe, secure, and habitable condition, including continual compliance with Section 1336.03, "Duties of Owner":

1. Fire damaged buildings: so long as clean up, repair or demolition is initiated within 90 days from the date of the fire.

2. The owner, lessee, or party in control of any vacant building and/or vacant unit of a building can produce evidence the vacant building or vacant unit will be reoccupied within 90 days of becoming vacant. Such evidence shall include an application for occupancy filed with the South Euclid Building Department by the new user intending to occupy the space.

1336.04 VACANT BUILDING INSPECTION REQUIRED

- (a) The owner, agent, or party in control of any vacant building, or unit of a building, shall apply for and obtain a vacant building inspection from the Building Commissioner prior to selling, transferring, or conveying any interest in or entering into an agreement to sell, transfer or otherwise convey an interest in such property, this includes entering into a lease with an entity to occupy the building or unit of a building. A copy of such completed inspection report shall be provided to the prospective purchaser, transferee, or lessee prior to sale or commencement of a lease.
- (b) An agreement to sell, transfer or otherwise convey an interest in a Vacant Building, or a lease agreement for a tenant to occupy a vacant unit of a building, shall include a copy of the vacant building inspection report from the Building Commissioner, in order for the prospective purchaser, transferee, or lessee to be aware of all known violations of the City Building, Housing and/or Zoning Codes found as a result of an exterior and interior inspection.
- (c) The owner shall submit to the City of South Euclid Building Department a statement signed by the purchaser or transferee, or lessee, acknowledging receipt of the vacant building inspection report, and such statement shall list thereon the date the report was given to the purchaser or transferee, or lessee.

1336.05 VACANT BUILDING INSPECTION

An application for a vacant building inspection required by this chapter shall be made upon forms supplied by the Building Commissioner.

- (a) The Building Commissioner shall cause a general exterior and interior inspection for the vacant building or unit of a building and premises to be made.
- (b) The vacant building inspection report shall contain the following information:
 1. The street address or other identifying characteristics of the vacant building or unit of a building;
 2. The name and address of the owner(s); lessee or party in control;
 3. The authorized use and occupancy of the building or vacant unit of a building;
 4. The listing of all known violations of the building code existing at the time of such inspection.
- (c) Should the building or unit of a building remain vacant for a period longer than one year from the date of the inspection, a new inspection of the property shall be conducted as outlined above. There shall be a fee of \$25.00 per year for each inspection, after the first year.

1336.06 FEES

- (a) In order to legally occupy a space, a user must file for business occupancy with the Building Department and pay the business occupancy application fee. In addition, a Certificate of Compliance will be issued once violations have been corrected and a user is legally occupying the space. The fee for a Certificate of Compliance shall be \$200.00.
- (b) There shall be no fee for one (1) re-inspection requested by the same owner within twelve months from the date of the initial inspection to verify correction of violations stated within the vacant building inspection report. All subsequent re-inspections may be billed at \$50.00 per inspection.

(c) In the event of resale within the one-year period, if violations have not been corrected, the vacant building inspection report shall be transferred to any subsequent bona fide purchaser and shall be valid for the remainder of that period.

1336.07 CORRECTION OF VIOLATIONS

Any violations found upon inspection of the premises shall be corrected prior to issuance of the Certificate of Compliance. A property owner shall have six (6) months from the date of the inspection to correct all violations. Violations that cannot be corrected due to seasonal conditions shall not preclude the issuance of a Certificate of Compliance; provided that, issuance of such certificate shall be upon written acknowledgement of all violations and agreement to correct all violations within nine (9) months of the inspection date.

1336.07 (a) APPEALS

1. The Board of Zoning Appeals and Building Standards (BZA) as established by ordinance, shall be the Board of Appeals for this Chapter and its powers and duties and the procedures for appeal shall be as provided in such ordinance establishing the Board.

2. The owner of a vacant building, or vacant unit of a building, shall have the right to appeal from any order of, or written notice issued by, the Building Commissioner within thirty days from the date such notice was given, mailed or issued, and to appear before the Board within sixty (60) days of receipt of the notice appealed from, to show cause why he/she should not comply with such notice. Such appeal must be in writing. Failure to file a written appeal with the Board within the time prescribed herein shall constitute a waiver of the right to appeal. However, filing of an appeal from any such notice shall suspend action on enforcement of such notice until the appeal is acted upon by the Board.

1336.08 CERTIFICATE OF COMPLIANCE

(a) At the request of the owner of property or his/her agent, the City shall issue a letter or other written document signed and dated by the Building Commissioner stating that all violations listed on the vacant building inspection report have been completed to the City's satisfaction, and the property is eligible for occupancy. No previously vacant building, or vacant unit of a building, can be occupied until this Certificate of Compliance is obtained. This Certificate of Compliance is not in lieu of a business occupancy application. Upon issuance of a Certificate of Compliance, a user of a building or unit of a building, must still file for and obtain business occupancy from the Building Department prior to having operations open to the public.

(b) At the request of the owner of the property or his/her agent, the City may issue a letter or other written document signed and dated by the Building Commissioner stating that specific violations listed on the vacant building inspection report have been completed to the City's satisfaction. If the Building Commissioner issues such a letter or written document, it shall contain the specific violation(s) that remain outstanding.

1336.09 LIABILITY

The issuance of a Certificate of Compliance does not guarantee compliance with the Building, Housing and/or Zoning Codes, nor does the Building Commissioner nor his or her duly authorized designee(s) accept any liability for non-compliance with same. Such certificate shall be considered by all parties as the City's best effort to make known to the owner, a potential purchaser, or potential tenant, of any violations on a given property at the time the inspection is made.

(a) The City assumes no liability or responsibility for the failure to report violations that may exist and makes no guarantee whatsoever, since there may be further violations which were not detected, which may arise in the future, or which may only be determined by a licensed electrician, plumber or other specialist at the expense of the person desiring such an inspection.

(b) In issuing a vacant building inspection report, the City does not thereby insure, warrant or guarantee to the holder thereof, to his assignees, or any other interested party that such report contains all of the violations of the South Euclid Codified Ordinances, state or federal law.

(c) In issuing a Certificate of Compliance document under the provisions of this chapter, the City does not thereby insure, warrant or guarantee the quality of repair or standard of work completed in the correction of violations listed on a vacant building inspection report. Such document should be construed only as a statement by the City that some or all of the violations listed on the vacant building inspection report have been corrected to the City's satisfaction.

1336.10 NEW CONSTRUCTION OR EXPANSION

The following provisions shall apply to any "vacant or unoccupied non-residential property," as defined in Section 1336.02 Definitions, constructed in the City of South Euclid after the effective date of this Chapter.

Unless otherwise specifically provided in a developer's agreement approved by the City, all non-residential properties, constructed or expanded, as defined in Section 1336.02 Definitions, after the effective date of this Chapter, shall be subject to the following provisions:

(a) The owner and tenant(s) shall maintain the non-residential property in compliance with all provisions of the Codified Ordinances of the City of South Euclid and/or a plan approved as part of a developer's agreement approved by the City. If the non-residential property or any part thereof is found not to be in compliance with Codified Ordinances of the City of South Euclid and/or a plan approved as part of a developer's agreement approved by the City, the City may take action to correct the situation pursuant to South Euclid Codified Ordinance Chapter 531.

(b) If the non-residential property has any vacancy, the owner or operator of the non-residential property shall fully comply with this Chapter.

(c) Prior to issuance of a building permit for any non-residential property, the owner and/or tenant(s), as may be required by the City, shall pay a fee equal to 1% of the total estimated cost of construction. The City shall hold all funds collected to be used towards the cost of nuisance abatement of any non-residential buildings or buildings the City may undertake according to the South Euclid Codified Ordinances.

(d) Prior to issuance of a building permit for any non-residential property, the owner and/or tenant(s), as may be required by the City, shall provide the Building Commissioner and Director of Law a document stating that no lease that refers, relates or is in any way connected to that non-residential property contains a provision prohibiting the owner, agent, property manager, successor or assign of a non-residential from re-leasing all or any portion of a non-residential property when a tenant has either involuntarily or voluntarily vacated all or any portion of a non-residential property.

1336.11 PENALTY

Any person who violates any provision of this Chapter or of the rules and regulations issued hereunder shall be fined not less than \$200 and not more than \$1,000 for each offense. Every day that a violation continues shall constitute a separate and distinct offense. Unpaid registration fees and fines shall be an assessment on the property enforceable in the same manner as assessments for delinquent property taxes.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is deemed to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and for further reason that it is important to protect and enhance the safety and aesthetic quality of the non-residential building stock within the City at the earliest possible time. Wherefore, this Ordinance shall take effect and be in force upon passage by City Council and signature of the Mayor.

Passed this _____ day of _____, 2019.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law