



**LEGAL BULLETIN #2003-03
OFFICE OF LEGAL AFFAIRS**

VACANT/OPEN BUILDINGS



Legal Flag: The effectiveness of various ordinances targeting owners of dangerous or vacant/open buildings is dependent upon Department members' awareness of such conditions and timely notification.

This LEGAL BULLETIN discusses the remedies available to ensure the owner of a vacant/open building properly secures the property, and the role of Department members in the process.

THE ORDINANCES

In recognition of the hazards vacant/open properties present, several Chicago Municipal Code (M.C.C.) ordinances have been enacted which require a property owner to ensure property which has become vacant or open is properly secured and insured. Other ordinances impose fines and other penalties, including forfeiture of property, for such buildings.

A vacant building is defined by ordinance as a "building which is lacking habitual presence of human beings who have a legal right to be on the premises, or at which substantially all lawful business operations or residential occupancy has ceased, or which is substantially devoid of content." Residential property shall not be deemed vacant if "it has been used as a residence by a person entitled to possession for a period of at least three months within the previous nine months and a person entitled to possession intends to resume residing at the property." Multi-family residential property containing five or more dwelling units shall be considered vacant when substantially all of the dwelling units are unoccupied." See M.C.C. 13-12-

125(e), "Vacant buildings-Owner required to act-Enforcement authority."

Section 13-12-125, subsections (a), (b) and (c) require an owner to register vacant property within 30 days of the vacancy, annually renew the registration; enclose and secure the building; affix a sign to the building indicating the name, address and telephone number of the owner and authorized agent; maintain the building in a "secure and closed condition" until re-occupancy or repair or completion has occurred; and obtain liability insurance within stated coverage limits. Subsection (d) provides fines for noncompliance.

Section 13-12-140, "Vacant or open buildings-Watchman required-Violation-Penalty," requires owners of vacant and open buildings, uncompleted abandoned buildings, and boarded-up, or otherwise enclosed vacant buildings to provide a watchman upon the premises every day between the hours of 4pm and 8am, unless the building has been secured by other methods approved by the building commissioner. The watchman must be so provided until the building is either occupied or razed. Failure to comply with this provision is punishable by fines which increase with each offense, culminating in incarceration. In the event a forcible felony subsequently occurs on the premises for which an owner has been notified in writing of his

noncompliance, a mandatory 30-day minimum sentence is required.

Section 13-12-145, "Improperly maintained buildings and structures subject to nuisance abatement proceedings," is a powerful tool in ensuring owner compliance with various health and building codes. Buildings which remain vacant and open subsequent to court or administrative order to secure or close; buildings which contain health, fire, building or zoning violations which are imminently dangerous and hazardous; and buildings which have been vacant for two years or more, with costs of repair exceeding market value, are declared to be "public nuisances," and are subject to abatement proceedings. Upon a preponderance of the evidence, an order of abatement may be issued which requires the owner, within the time frame specified within the order, to take "all reasonable measures necessary to abate the nuisance." An owner's failure to comply allows the proper authorities to repair, improve, vacate or demolish the building. In addition an order of forfeiture may be sought, allowing the City to dispose of the property as authorized by the City Council. All costs associated with an owner's compliance failure may result in a lien upon the property and are also enforceable against the owner personally.

For the purposes of this section, "vacant" refers to a building which is not habitually occupied by persons legally entitled to possession or which is substantially devoid of content; "open" refers to a building that has any door, window or wall missing or unsecured, or has any other opening so as to allow entry by a human being.

See M.C.C. 13-12-145(a).

DEPARTMENT MEMBERS' ROLE

The effectiveness of the ordinances discussed above is directly correlated to the degree in which Department members participate in the abatement process. The initiation of an

abatement proceeding requires notification: the City authorities responsible for investigating and prosecuting noncompliant building owners must be made aware of the conditions which constitute a violation. Department members should familiarize themselves with the provisions of the ordinances, analyze conditions within their areas of responsibility, and determine if notification is warranted. Notification may be made either by completing a CAPS service request, or by contacting the Department of Buildings at 312-744-3400.

SUMMARY

Vacant property is a detriment to public health and safety. In response, the City has enacted several ordinances which place an affirmative duty upon owners of such property. The owner of a building which becomes vacant or open is under a duty to ensure the City is notified of the condition, to obtain and maintain liability insurance for the premises, to ensure the property is properly secured, and to comply with court or administrative orders; seriously deteriorated buildings may be considered nuisances. Penalties include fines, incarceration, and forfeiture of the property.

Abatement proceedings do not occur spontaneously; the City authorities responsible for investigating and prosecuting noncompliant building owners must be made aware of the conditions which constitute an offense. Accordingly, Department members should familiarize themselves with both the provisions of the ordinances discussed within this bulletin, and the conditions of buildings within their areas of patrol responsibility. Notification of conditions which may warrant abatement should be made by completing a CAPS service request or by directly contacting the Department of Buildings at 312-744-3400.

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