

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of Ogden

Local Law No. 4 of the year 2016

A local law to add certain provisions to the Property Maintenance Code and to enact a Vacant and
(Insert Title)
Defaulted Mortgage Property Registry to the Code of the Town of Ogden.

Chapter 144 §144-5 General Provisions (Add) Chapter 196: VACANT AND DEFAULTED
MORTGAGE PROPERTY REGISTRY

Be it enacted by the Town Board of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Ogden

as follows:

Resolution #268-11.9.16

Introductory Local Law No. 4 of the year 2016

Introduced by Councilman Uschold
Seconded by Councilman Perry

WHEREAS, the Town Board of the Town of Ogden did heretofore call for a Public Hearing to consider the enactment of the Introductory Local Law No. 4 of the year 2016, which local law proposes to add certain provisions to the Property Maintenance Code and to enact a Vacant and Defaulted Mortgage Property Registry to the Code of the Town of Ogden; and

WHEREAS, the Town Board did hold and conduct such public hearing at a regularly scheduled meeting thereof held on the 9th day of November 2016, and at which hearing all interested persons were heard concerning the subject matter thereof; and

WHEREAS, the Town Board of the Town of Ogden did find and determine that the proposed adoption of such local law is a Type II Action and did adopt a Resolution and finding of Negative Determination of Environmental Significance with respect to the same; and

WHEREAS, the Town Board has determined that the adoption of such proposed Local Law will greatly assist in

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 4 of 2016 of the (County)(City)(Town)(Village) of Ogden was duly passed by the Town Board on November 9 2016, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) _____ (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) _____ (repassed after disapproval) by the _____ on _____ 20____.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) _____ (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Abelle M. Burley
Clerk of the ~~county legislative body~~, City, Town or Village Clerk or officer designated by local legislative body

Date: 11-29-16

(Seal)

dealing with abandoned and defaulted properties within the Town of Ogden;

NOW, THEREFORE, be it resolved by the Town Board of the Town of Ogden, Monroe County, New York, as follows:

SECTION I: That by the adoption of this Resolution, the Town Board of the Town of Ogden does hereby enact Introductory Local Law No.4 of the year 2016, which local law shall read and provide as follows:

**TOWN OF OGDEN
PROPERTY MAINTENANCE CODE**

Chapter 144

§144-5 General Provisions (Add)

F. Vacant buildings or structures. Every person owning or having charge or control of any building or structure which has been vacant for over 60 days shall remove all combustible waste and refuse therefrom and lock, barricade, guard continuously or otherwise secure all windows, doors and other openings in the building to prohibit entry by unauthorized persons in a manner approved by the Building Inspector.

G. Habitually noncompliant vacant buildings or structures. A vacant building or structure shall be considered habitually noncompliant when the person, business, organization or legal entity owning or having charge or control of the building or structure has been noncompliant with three or more notices issued by the Building Inspector or his/her representative in accordance with § 157-18(C) during the same period of vacancy.

**Town of Ogden
Vacant and Defaulted Mortgage Property Registry**

**Chapter 196: VACANT AND DEFAULTED MORTGAGE PROPERTY
REGISTRY**

§ 196-1 Purpose and Intent.

The purpose and intent of this chapter is to establish a process to address the deterioration, crime and decline in value of the Town of Ogden neighborhoods caused by vacant properties and properties with defaulted mortgages located within the Town, and to identify, regulate, limit and reduce the number of these properties located within the Town. It is the further intent of this chapter to establish a

registration requirement as a mechanism to protect neighborhoods from the negative impact and conditions that occur as a result of vacancy, absentee ownership, lack of adequate maintenance and security and will provide a method to expeditiously identify multiple parties and their contact person(s) for each property responsible for this protection.

§ 196-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

Registrable Property

Any real property located in the Town that is vacant as defined herein, and any real property located in the Town, whether vacant or occupied, that is encumbered by a mortgage in default, is subject to an ongoing foreclosure action by the Mortgagee or Trustee, is subject to an application for a tax deed or pending tax assessor's lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a "default/foreclosure" property as "registrable" shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm's length transaction or the foreclosure action has been dismissed and any default on the mortgage has been cured.

Accessible Property/Structure

A property that is accessible through a comprised/breached gate, fence, wall, etc., or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Annual Registration

Twelve (12) months from the date of the first action that required registration, as determined by the Town, or its designee, and every subsequent 12 months. The date of the initial registration may be different than the date of the first action that required registration.

Applicable Codes

Includes, but is not limited to, the Town's Zoning Code, the Town's Property Maintenance Code, and the New York State Fire Prevention and Building Codes, as currently in effect and hereafter amended from time to time.

Blighted Property

Properties that have broken or severely damaged windows, doors, walls, or roofs which create hazardous conditions and encourage trespassing; or properties whose

maintenance is not in conformance with the maintenance of other neighboring properties causing a decrease in value of the neighboring properties; or properties cited for a public nuisance; or properties that endanger the public's health, safety, or welfare because the properties or improvements thereon are dilapidated, deteriorated, or violate minimum health and safety standards or lacks maintenance as required by the applicable codes.

Enforcement Officer

Shall include the Building Inspector and all certified code enforcement officials.

Default

When a mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

Evidence of Vacancy

Any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; past due utility notices and/or disconnected utilities; accumulation of trash junk or debris; abandoned vehicles auto parts or materials; the absence of furnishings and/or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers and/or mail, or statements by neighbors, passers-by, delivery agents or government agents; or the presence of boards over doors, windows or other openings in violation of applicable code.

Foreclosure

The legal process by which a mortgagee, or other lien holder, terminates a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. This definition shall include, but is not limited to, public notice of default, a deed-in-lieu of foreclosure, sale to the mortgagee or lien holder, certificate of title and all other processes, activities and actions, by whatever name, associated with the described process. The process is not concluded until the property obtained by the mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

Local Property Management Company

A property manager, property management company or similar entity responsible for the maintenance and security of registrable real property within 20 driving

miles of the Town limits. Upon review of credentials the Town, or its designee, may allow a non-local property manager to be listed.

Mortgagee

The creditor, including but not limited to, trustees; mortgage service companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement.

Owner

Any person, firm, corporation or other legal entity who, individually or jointly or severally with others, holds the legal or beneficial title to any building, facilities, equipment or premises subject to the provisions of this chapter.

Property Management Company

A local property manager, property maintenance company or similar entity responsible for the maintenance of registrable real property.

Real Property

Any improved residential or commercial land, buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the Town limits. Developed lots are considered improved land.

Rental Property

Property that contains a single-family rental dwelling unit or multi-family rental dwelling units for use by residential tenants including but not limited to the following: mobile homes, mobile home spaces, town homes and condominium unit(s). A rental dwelling unit includes property that is provided to an individual or entity for residential purposes upon payment of rent or any other consideration in lieu of rent, regardless of relationship between lessor and lessee.

Vacant

Any parcel of land in the Town that contains any building or structure that is not lawfully occupied or inhabited by human beings as evidenced by the conditions set forth in the definition of "Evidence of Vacancy" above which is without lawful tenant, or lawful occupant or without a certificate of occupancy.

§196-3 Applicability.

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to the Town above and beyond any other State, County, or Town provisions for same.

§ 196-4 Establishment of Registry.

Pursuant to the provisions of this chapter, the Town, or its designee, shall establish a registry cataloging each Registrable Property within the Town, containing the information required by this chapter.

§ 196-5 Registration of Vacant and/or Defaulted Mortgage Real Property.

A. Any owner of any vacant residential structure located within the Town shall, within forty-five (45) days of the structure becoming vacant, register said residential structure with the Office of the Building Inspector, or its designee, on forms or other manner as directed. A separate registration is required for each vacant residential structure.

B. Any mortgagee who holds a mortgage on real property located within the Town shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor. The Mortgagee shall, within ten (10) days of the inspection, register the property with the Office of the Building Inspector, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.

C. Registration pursuant to § 196-5(A) shall contain the name, direct mailing address, telephone number, and any e-mail address for the owner of the vacant residential structure. Registration pursuant to § 196-5(B) shall contain the name, direct mailing address, a direct contact name, telephone number, and e-mail address for the Mortgagee/Trustee, and the Servicer, and the name and twenty-four (24) hour contact phone number of the local property management company responsible for the security and maintenance of the property who has the authority to make decisions concerning the abatement of nuisance conditions at the property, as well as any expenditure in connection therewith.

D. Owners or mortgagees who have existing registrable property on the effective date of this ordinance have thirty (30) calendar days from the effective date to register the property with the Office of the Building Inspector, or its designee, on forms or other manner as directed. A separate registration is required for each registrable property.

E. If the mortgage on a registrable property is sold or transferred, the new Mortgagee is subject to all the terms of this chapter and within five (5) days of the transfer shall register the property and pay a registration fee in accordance with this chapter. Any previous unpaid annual registration fees are the responsibility of the new Mortgagee or Trustee and are due and payable with their initial registration.

F. If the Mortgagee owner of a foreclosed real property sells or transfers the property to a non-arm's length related person or entity, the transferee is subject to all the terms of this chapter and within five (5) days of the transfer register the property and pay a registration fee in accordance with this chapter. Any previous unpaid annual registration fees are the responsibility of the new Registrable property owner and are due and payable with their initial registration.

G. As long as the property is Registrable it shall be inspected by the owner, mortgagee, or designee, monthly. If an inspection shows a change in the property's occupancy status the mortgagee shall, within ten (10) days of that inspection, update the occupancy status of the property registration.

H. A non-refundable annual registration fee established by resolution by the Town Board, shall accompany each registration pursuant to this section.

I. All registration fees must be paid directly from the mortgagee, trustee, servicer, or owner. Third party registration fees are not allowed without the consent of the Town and/or its authorized designee.

J. Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they are registrable.

K. Until the mortgage or lien on the property in question is satisfied, or legally discharged, the desire to no longer pursue foreclosure, the filing of a dismissal of lis pendens and/or summary of final judgment and/or certificate of title, voluntary or otherwise, does not exempt any mortgagee holding the defaulted mortgage, from all the requirements of this article as long as the borrower is in default.

L. Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.

M. Failure of an owner or mortgagee to properly register or to modify the registration form from time to time to reflect a change of circumstances as required

by this article is a violation of this chapter and shall be subject to enforcement and any resulting monetary penalties.

N. Pursuant to any administrative or judicial finding and determination that any property is in violation of this chapter, the Town may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

§ 196-6 Maintenance Requirements.

Properties subject to this chapter shall, at all times, comply with all provisions of the Town's Property Maintenance Code and the following:

- a) Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
- b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- c) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.
- d) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- e) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s).
- g) Failure of the mortgagee and/or owner to properly maintain the property may result in a violation of the applicable code(s) and issuance of a citation or

Notice of Violation in accordance with the applicable code of the Town. Pursuant to a finding and determination by the Town's Code Enforcement Board, Special Magistrate or Hearing Officer, or a court of competent jurisdiction, the Town may take the necessary action to ensure compliance with this section.

h) In addition to the above, the property is required to be maintained in accordance with the applicable code(s) of the Town.

i) Properties subject to these Sections shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

j) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.

k) If a property is registrable, and the property has become vacant or blighted, a local property manager shall be designated by the Mortgagee or Owner to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this article, and any other applicable laws.

§ 196-7 Maintenance Secured Upon Commencement of Foreclosure Action.

Any mortgagee who commences a foreclosure action against a residential property located in the Town shall, in addition to all other requirements of this chapter, provide cash, a cash bond, or a letter of credit to the Town acceptable to the Building Inspector or his/her designee, in the sum of Ten Thousand Dollars (\$10,000.00), to secure the continued maintenance of the property throughout the foreclosure proceeding and reimburse the Town for any expenses incurred in inspecting, securing, repairing and/or making said property safe by any legal means, including but not limited to, demolition. The cash, cash bond, or letter of credit must be provided to the Town within forty-five (45) days of a foreclosure action being commenced. The \$10,000.00 cash, cash bond, or letter of credit provided to the Town shall remain valid for a period of one year from the date of said cash, cash bond, or letter of credit being provided. A person, business, organization, bank or lender who has commenced a foreclosure action shall, thereafter, annually provide the Town with cash, a cash bond, or a revised letter of credit in an amount that will cause the total sum being held by the Town to equal

\$10,000.00. Such renewal shall be submitted prior the expiration of the one year period and shall continue annually until the foreclosure action is no longer pending and the structure that is the subject of the foreclosure action is being lawfully occupied for residential purposes. At such time, all sums being held by the Town under this section will be released to the mortgagee that provided the cash, cash bond, or letter of credit.

§ 196-8 Administration, Enforcement and Penalties.

A. This chapter shall be administered and enforced by the Building Inspector as set forth in Chapter 144 of the Code of the Town of Ogden, or his/her designee.

B. The requirements of this chapter may be enforced as follows:

(1) By taking any and all actions prescribed for correction of violations as set forth in the Town's Property Maintenance Code, Chapter 144.

(2) The Building Inspector or his/her designee shall have the following alternative remedies for enforcement of this chapter:

(a) Appearance tickets. The Building Inspector or his/her designee shall have the authority, pursuant to New York State Criminal Procedure Law, to issue an appearance ticket subscribed by him/her, directing a designated person to appear in a designated local criminal court at a designated future time in connection with the alleged commission of a designated violation of this chapter or any order made thereunder.

(b) Penalties for offenses. Any person who fails to comply with any provision of this chapter or fails to comply with any notice, order or directive of the Building Inspector or his/her representative after expiration of the time for compliance established in accordance with this chapter shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment not to exceed 15 days, or both, for such violation. In the event of any failure to so comply, each and every day that such violation continues shall constitute a separate offense, and the penalties prescribed above shall be applicable to each such separate offense.

(c) Penalties for offenses under §196-7, maintenance secured upon commencement of foreclosure action. Any person, business, organization, bank or lender who fails to comply with §196-7 of this chapter shall, upon conviction, be punished by a fine of not more than \$5,000 or by imprisonment not to exceed 15 days, or both, for such violation. In the event of any failure to so comply, each and

every day that such violation continues shall constitute a separate offense, and the penalties prescribed above shall be applicable to each such separate offense.

§ 196-9 Immunity of Enforcement Officer.

Any enforcement officer or any person authorized by the Town to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this chapter.

§ 196-10 Severability.

If any section, sentence, clause or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION II: That the Town Clerk shall give due notice of the enactment of this local law as required by statute.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold

Nays: None