

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF CAERNARVON TOWNSHIP, BERKS COUNTY, PENNSYLVANIA ENTITLED "BLIGHTED PROPERTY" REQUIRING MAINTENANCE OF PROPERTY AND PROVIDING FOR PENALTIES AND ENFORCEMENT.**

**WHEREAS**, Caernarvon Township (hereinafter referred to as the "Township ") has observed an increase in the number of deteriorated properties caused by prolonged vacancies located throughout the Township;

**WHEREAS**, the Township finds that the presence of deteriorated, blighted properties as a result of vacancy and neglect by their owners can lead to unsafe conditions within these properties, which can create a hazard to the community or anyone entering the property;

**WHEREAS**, these deteriorated, blighted vacant properties create public nuisances, which have an impact on crime and the quality of life of our residents and can require significant expenditure of public funds in order to abate and correct the nuisances;

**WHEREAS**, the Township finds that vacant, deteriorated properties when left unsecured may lead to the creation of an attractive nuisance to children as well an environment for vandals and criminals;

**WHEREAS**, the Township has already adopted construction codes to regulate building standards for the exterior of the structures and the condition of the property as a whole; and

**WHEREAS**, the Township has a responsibility to protect the public health, safety and welfare of Township residents from any hazards that may develop on a vacant, deteriorated property by enacting reasonable regulations to ensure that all properties are maintained in a safe and secure manner to preserve and protect the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of Caernarvon Township, Berks County, Pennsylvania, and it is hereby **ENACTED AND ORDAINED** by the same as follows:

**Section 1. PURPOSE AND INTENT**

It is the purpose and intent of Caernarvon Township to establish minimum safety and maintenance standards for vacant, deteriorated properties within the Township to protect the public health, safety and welfare.

**Section 2. DEFINITIONS**

Garbage: The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Legally Unoccupied (Vacant): Real Property whose occupancy has been discontinued for a period of at least ninety (90) ninety days shall be presumed to be abandoned and vacant. In such instance, the Blighted Property Officer may provide written notice to the Owner by mail, at the last address of record with the County Assessment Office, directing the Owner to advise as to its intent to continue the occupancy of the Property. The notice shall advise the Owner that, if the Owner fails to provide written notice to the Blighted Property Officer within thirty (30) days' receipt of such notice (unless extended in writing by the Officer) of its intent to continue the occupancy, then the use shall be construed to be discontinued by the Township and the Property shall be declared Legally Unoccupied. To the extent that the mailing to the Owner is returned as undelivered, the Blighted Property Officer may post a notice of the same on the Property, providing a minimum of an additional fourteen (14) days from such point (but in no event less than thirty (30) days from the initial mailing) of the above. If the Owner provides written notice of the intent to continue the use, then the Township shall declare the Property to be occupied. If the Owner fails to respond to the notice, then the Property shall be deemed Legally Unoccupied. The Township may then take any and all actions pursuant to this Ordinance and otherwise pursuant to the law.

Notwithstanding any notice given by an Owner to the Blighted Property Officer indicating that the Property is or will be occupied, to the extent the Blighted Property Officer concludes the Property is or remains vacant based on a preponderance of the available factual evidence, the Blighted Property Officer may declare the Property vacant. In this event, the Blighted Property Officer shall provide written notice given to the Owner setting forth the facts in support of his or her conclusion before proceeding with enforcement actions available pursuant to this Ordinance and state law. Owner shall have a right to appeal the Blighted Property Officer's determination pursuant to Section 11 of this Ordinance.

Owner: Any person, corporation, financial institution, agent, operator, or other legal entity having an ownership interest, whether legal or equitable, in real property. The term shall also apply to any person, corporation, financial institution, agent, operator, or other legal entity or agent responsible for or having control over the real property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Person: An individual, corporation, partnership, estate, executor, administrator, financial institution or any other group acting as a unit.

Property (or “Blighted Property”): Any parcel of real property upon which a building, structure or equipment is located that is Legally Unoccupied and which poses a danger to public health, safety and welfare in violation of Section 3 or Section 4 of this Ordinance.

Property Maintenance Company: A local property manager, property maintenance company or similar entity or person able to maintain, secure, care for and monitor the Property.

Rubbish: Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

Weeds: Grasses, annual plants and vegetation, other than trees or shrubs, provided, however, this term shall not include cultivated flowers or gardens.

### **Section 3. APPOINTMENT OF BLIGHTED PROPERTY OFFICER**

The Board of Supervisors shall, annually or at any time, appoint an individual or firm to serve as the Township’s Blighted Property Officer. Such individual or firm shall serve at the pleasure of the Board of Supervisors. The Blighted Property Officer shall provide a written report at such times as directed by the Board of Supervisors, to describe and detail the complaints received, the work performed and the enforcement activities undertaken. It is the role of the Blighted Property Officer to investigate and, as necessary, enforce the provisions of this Ordinance upon submission of a written complaint or discovery of a violation hereof, which the Township expects to be carried out in a cost-effective manner designed: to protect the public health, safety and welfare; and to assist residents in bringing their properties into compliance with the all Code requirements. No enforcement action shall be initiated by the Blighted Property Officer without authorization by the Board of Supervisors.

### **Section 4. MAINTENANCE STANDARDS**

- A. Property subject to this Ordinance shall be kept free of Weeds, overgrown brush, dead vegetation (including damaged or dead trees), Garbage, Rubbish, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices except those required by Federal, State or Local law, discarded personal items including furniture,

clothing, large and small appliances, printed material or any other that give the appearance that the property is blighted.

For purposes of this Paragraph only, the following provisions shall apply to Weeds, overgrown brush and dead vegetation on Properties subject to this Ordinance: Weeds shall not exceed a height of more than ten (10) inches in the following locations: 1) located within fifty (50) feet of a building in areas visible from a neighboring property or roadway; or 2) within fifty (50) feet of a driveway access of a property (measured at the point of interconnection with a public or private roadway). Notwithstanding anything herein to the contrary, no plantings along a roadway shall be permitted that impinge into or obstruct a clear sight triangle for the roadway and/or any driveways accessing a roadway.

- B. Property subject to this Ordinance shall be maintained free of graffiti or similar markings by removal of painting over with an exterior grade paint that matches the color of exterior structure.
- C. Pools and spas shall be maintained so the water remains free and clear of pollutants and debris. If the water becomes stagnant and a breeding ground for mosquitos, insects or other wildlife, it must be drained and covered to avoid contamination or otherwise remediated.

D. Unsafe Structures, Buildings and Equipment

Unsafe structures, buildings or equipment on Blighted Property shall not be permitted. A structure or building or piece of equipment shall be considered unsafe when it poses a risk of harm to the general public or occupants, including, but not limited to:

- 1) Structures, buildings or equipment that are in danger of collapse as determined by the Township's Blighted Property Officer or Township Engineer or designated consultant;
- 2) Buildings with exterior stairways, balconies and porches that pose an imminent risk of collapse;
- 3) Doorways, windows, basement stairways or hatchways that harbor or fail to prevent the entrance of rodents, rain and surface drainage water.

The Blighted Property Officer may declare a building or structure unfit for human occupancy if: the same fails to comply with the minimum safeguards necessary to protect or warn occupants of fire; or if the structure or building is so damaged, dilapidated, structurally unsafe or unstable that further occupancy constitutes a threat to the health of occupants thereof.

## **Section 5. SECURITY REQUIREMENTS**

A. Property subject to this Ordinance shall be maintained in a Secured Manner to ensure that the Property and all structures, buildings and equipment on the Property are not accessible to unauthorized persons.

B. The term “Secured Manner” shall include, but not be limited to, the following:

- The closure and locking and/or repair of window, doors, gates and all other openings and points of ingress and egress to prevent access to improvements on the Property by a child. Broken windows shall be secured by re-glazing of the window.
- Open wells, cisterns, cesspools, sinkholes or any other type of holes on the Property in areas that are accessible to the general public or children shall be abated by the Owner to prevent the risk of access or fall. Tarps or temporary fencing shall not be permitted to cover a hole for more than thirty (30) days, unless extended for good cause shown by the Blighted Property Officer.
- In the event the Property is not being actively marketed for sale or lease, the doors and windows must be secured. In the event the doors or windows are broken, they shall be repaired or boarded up to ensure security while the Property is in blighted condition.

C. In the event that a Property is subject to a mortgage and is in default of the mortgage (i.e., is in foreclosure), and the Property has become blighted, the mortgage company shall designate a Property Maintenance Company to perform the work necessary to ensure the Property complies with this Ordinance and all other applicable Township Codes. The Property Maintenance Company shall perform and submit quarterly inspections to the Blighted Property Officer to verify compliance with this Ordinance. The Property Maintenance Company shall provide the Blighted Property Officer with emergency contact information of a representative of the Company in case an issue occurs that requires immediate resolution.

## **Section 6. SPECIAL PROVISIONS RELATED TO UNSAFE STRUCTURES**

### **A. Closing of Vacant Structures – Not in Danger of Collapse**

If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Blighted Property Officer is authorized to follow the notice provisions and post a placard in accordance with Section 9.E.

### **B. Closing of Vacant Structures – Danger of Collapse**

**1. Imminent Danger.** When, in the opinion of the Blighted Property Officer, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to any unauthorized building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials or operation of defective or dangerous equipment, the Blighted

Property Officer is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The Blighted Property Officer shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure is Unsafe and Its Occupancy Has Been Prohibited by the Blighted Property Officer." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

**2. Temporary safeguards.** Whenever, in the opinion of the Blighted Property Officer, there is imminent danger due to an unsafe condition, the Blighted Property Officer shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the Blighted Property Officer deems necessary to meet such emergency. This shall include employing the necessary labor and materials to perform the required work, closing sidewalks, streets, public ways and places adjacent to unsafe structures, if necessary, to protect the public safety. Costs incurred in the performance of emergency work shall be paid by the Owner. Appropriate legal proceedings shall be initiated against the Owner to recover the costs, including the filing of a municipal claim/lien in accordance with the Municipal Claims and Tax Liens Law, as may be amended, 53 P.S. § 7101, *et seq.*

### **C. Demolition**

**1. General.** The Blighted Property Officer may order the Owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure in the event the structure subject to construction cannot be made safe and secure by the Owner in the discretion of the Blighted Property Officer.

**2. Notices.** All notices shall be given in accordance with Section 9.A.

**3. Failure to Comply.** If the Owner of a premises fails to comply with a demolition order within the time prescribed, the Blighted Property Officer may cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, as approved by the Township Board of Supervisors, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate, in accordance with the Municipal Claims and Tax Liens Law, as may be amended, 53 P.S. § 7101, *et seq.*

### **Section 7. PUBLIC NUISANCE**

All deteriorated property in violation of the standards set forth in Section 3, above, is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary to protect the public health, safety and welfare.

## **Section 8. RIGHT OF ENTRY**

Upon presentation of proper credentials, the Blighted Property Officer may request of an Owner the right to enter a property, at reasonable times, to inspect the same for compliance with this Ordinance. Nothing herein shall abrogate the right of the Township to enter onto such property as authorized by law (including, but not limited to exigent circumstances). Further, nothing herein shall abrogate the right of the Township or Blighted Property Officer to pursue enforcement of this Ordinance for those violations visible from the right of way, neighboring properties or other public portions of a property (including, but not limited to, the approach to the main entry doorway and all areas observable therefrom). To the extent that a landowner refuses to grant such access, the Township may take all necessary actions to obtain lawful access, pursue enforcement or take action pursuant to Sections 9 or 10 below.

## **Section 9. PENALTIES**

- A. Notice of Violation. The Blighted Property Officer shall have the authority to issue a Notice of Violation to any individual or property owner in violation of this Ordinance. The Notice of Violation shall describe the violations, with citation to the applicable provisions of this Ordinance and shall provide a description of the steps that must be taken to correct the violations. The Notice of Violation shall also reference the penalties imposed, as set forth below, and the right to appeal the Notice to the Zoning Hearing Board (serving as the Blighted Property Board of Appeals). In the case of a property or structure occupied by a tenant, a copy of the Notice of Violation shall be provided to the tenant, noting that the ultimate responsibility for compliance with this Ordinance rests with the landowner of record.
- B. Fines. Any person violating or permitting the violation of the provisions of this Ordinance shall be subject to a fine of not more than \$1,000 for each violation, recoverable with costs and attorneys' fees. The establishment of a violation for purposes of setting fines or penalties for such violation shall be in accordance with a citation to a magisterial district judge with jurisdiction and venue over the location of the violation. Such an action will be subject to the procedures provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. A separate offense shall arise for each day or portion thereof a violation is found to exist and may be determined for each section of this Ordinance which is found to have been violated.
- C. Injunctive and Other Relief. In addition, the Township may, through its solicitor, institute injunctive, mandamus, or any other appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or other legal or equitable forms of remedy or relief. Such relief may include costs, fees, and charges, including the Township's attorney's fees (charged at the hourly rate approved by the Board of Supervisors of the Township) and costs, as may be permitted by law.
- D. Abatement. Notwithstanding any other provision of this Ordinance, but pursuant to the strictures of the law, the Township shall have the right to enter upon a property within the

Township to correct and abate a violation of this Ordinance, with all expenses associated with correcting the violation to be charged to the property owner responsible for the violation. Such expenses shall constitute liens against the property. To the extent that the violation of this Ordinance does not constitute an immediate threat to the public health, safety and welfare, the property owner shall be provided a minimum of twenty (20) days in which to abate the violation.

- E. Revocation of Use and Occupancy. To the extent that the Blighted Property Officer determines that an occupied building or structure poses a threat to the health, safety or welfare of the occupant(s) thereof, the Blighted Property Officer may: issue an order to declare the same unfit for human habitation; revoke the ability of the occupants to use and occupy the building or structure; and require the owner of the property to take all measures necessary to close up the premises, abate the unsafe conditions, and install all requisite temporary measures to address the same. To the extent that the property owner does not do so within a reasonable period of time, the Blighted Property Officer may take all action necessary to abate all exigent risks to the public and occupant health and safety. In issuing an order pursuant to this subsection, the Blighted Property Officer shall post the property as unfit for human habitation, “NOTICE – DECLARATION OF PROPERTY UNFIT FOR HUMAN HABITATION.” It shall thereafter be a violation of this Ordinance for any individual to continue to occupy such building or structure.

## **Section 10. DENIAL, SUSPENSION AND REVOCATION OF PERMITS AND APPROVALS**

The Township reserves all of its rights under and pursuant to the Abandoned and Blighted Property Act, including, but not limited to the right to deny or condition a permit application of an applicant who owns, operates or maintains a property in violation of this Ordinance.

## **Section 11. APPEALS**

- A. Any person aggrieved by any action of the Blighted Property Officer may appeal to the Township Zoning Hearing Board (serving as the Blighted Property Board of Appeals) within thirty (30) days of the applicable action, determination or notice of violation issued by the Blighted Property Officer. The failure of an individual to timely appeal a determination of the Blighted Property Officer shall constitute a waiver of the right to contest the determination of a violation. The appeal shall be processed and pursued pursuant to Section 908(1), (1.1), (2)–(8), and (10) of the Pennsylvania Municipalities Planning Code, with the exception that the provisions therein related to deemed approvals shall not apply. Except on application and approval by the Township Zoning Hearing Board, the pendency of an appeal shall not toll the imposition of the penalties set forth below and shall not abrogate, stay or toll an individual’s obligation to maintain their property in a safe, sanitary condition pursuant to this Ordinance.
- B. Any person aggrieved by a final decision of the Zoning Hearing Board may appeal to the Berks County Court of Common Pleas within thirty (30) days of the decision, failing which the person waives the right to contest the same.



**Section 12. SEVERABILITY**

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

**Section 13. REPEALER**

All Ordinances inconsistent with the above provisions are repealed to the extent of their consistency.

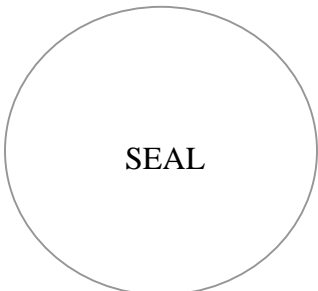
**Section 14. EFFECTIVE DATE**

That this Ordinance with take effect five (5) days after final passage.

ORDAINED and ENACTED by the Supervisors of the Caernarvon Township in lawful session duly assembled this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CAERNARVON TOWNSHIP

BY: \_\_\_\_\_  
Chairman



ATTEST:

\_\_\_\_\_  
Secretary