

ORDINANCE NO. 2017-11

**AN ORDINANCE ENACTING A NEW CHAPTER 634 PROPERTY NUISANCES,
REPEALING EXISTING CHAPTER 634 NUISANCES, AND REPEALING
ORDINANCE NO. 2011-14
AND DECLARING AN EMERGENCY**

WHEREAS, The Department of Public Service desires to establish the procedures for the abatement of nuisances, in order to prevent hazards to the health, safety and welfare of the public, to prevent blight in residential and other areas, and to present conditions which impair or adversely affect the value of neighboring properties; and,

WHEREAS, there is a need to update the Parma Heights Codified Ordinances to provide for vacant and abandoned and foreclosed properties; and

WHEREAS, Parma Heights Council did pass Ordinance No. 2011-14 attached hereto as Exhibit "A"; and,

WHEREAS, Ordinance No. 2011-14 is incorporated in the proposed new Chapter 634 Property Nuisances.

WHEREAS, the Council is desirous of adopting a new Chapter 634 Property Nuisances.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. That new Chapter 634 Property Nuisances in the form identified as Exhibit "B" attached hereto, and made a part hereof as though fully rewritten be adopted.

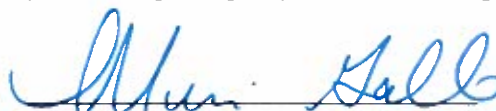
Section 2. Chapter 634 Nuisances as it has existed is repealed.

Section 3. Ordinance No. 2011-14 is repealed.

Section 4. This Council finds and determines that all formal action of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 5. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of said City and for the further reason it is necessary to enact a new Chapter 634 Property Nuisances, wherefore, this ordinance shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: 5-22-2017


PRESIDENT OF COUNCIL

ATTEST: Florence A. Bohdan

5-22-2017
APPROVED

FILED WITH
THE MAYOR: 5-22-2017


MAYOR

**CHAPTER 634
PROPERTY NUISANCES**

634.01 PURPOSE AND APPLICABILITY.

The purpose of this Chapter is to set forth standards for the declaration of a property or condition as a public nuisance, to declare vacant properties as nuisances, to authorize the abatement of nuisances by the City and to establish the procedures for the abatement of nuisances, in order to prevent hazards to the health, safety and welfare of the public, to prevent blight in residential and other areas, and to prevent conditions which impair or adversely affect the value of neighboring properties.

634.02 AUTHORITY TO INSPECT PROPERTIES WHERE NUISANCES EXIST AND TO ABATE NUISANCE CONDITIONS.

Whenever there shall be done or exist on any property an act, thing, or condition of a kind which has been or may hereafter be defined by ordinance, including a Codified Ordinance, as a nuisance, the Director of Public Service, or their designees, are authorized and directed promptly to enter and inspect the premises or structure where such nuisance is found to exist to determine the extent and nature of the nuisance and whether it has been abated, provided permission to enter or inspect is obtained from the owner or his or her agent. If such permission is refused or is otherwise unobtainable, a search warrant shall be obtained before such entry or inspection is made, except in the case of an existing emergency in which case entry or inspection may be made at any time and no search warrant is necessary. No person shall refuse to permit such emergency entry or inspection, nor shall any person hinder, obstruct, resist or abuse any person making or attempting to make such inspection.

634.03 DECLARATION OF PUBLIC NUISANCE, ORDER AND AUTHORITY TO ABATE.

(a) If the Director finds that a nuisance condition exists as defined in the City's Codified Ordinances, or otherwise by ordinance passed by Council, on any property, the Director may issue a notice declaring the existence of such nuisance, and may order the abatement of the nuisance or proceed to abate the nuisance.

(b) In addition to the authority granted in subsection (a) of this Section, if the Director finds that a property or a structure, by reason of deterioration of materials, lack of repair or maintenance, is or will become a hazard to the health, safety or welfare of its occupants or the public or is or will become a blighting or deteriorating factor in the neighborhood, or will impair or adversely affect the value of neighboring property, the Director may declare such property or structure to be a nuisance, issue a notice declaring the existence of such nuisance, and order the abatement of the nuisance or proceed to abate the nuisance.

(c) An occupied dwelling structure, which is determined by the Director to be in violation of Chapter 1363 of Parma Heights Codified Ordinances, is hereby declared to be a public nuisance.

(d) The existence of grass, weeds or other landscaping conditions that violate the provisions of Section 678.01 shall be considered a nuisance. If a warning notice is sent to a property owner, as provided in this Chapter, in any calendar year, either before or after such a nuisance is found to exist on a property, the Director may cause any such nuisance found during that calendar year to be abated or removed by the City as conditions may require, without further notice or warning.

(e) Additional conditions that constitute a nuisance include, but are not limited to;

(1) Any building, house or structure that is caused or allowed to become so out of repair and dilapidated that, in the condition it is permitted to be and remain, it will, if such condition is permitted to continue, endanger the life, limb or property of, or cause hurt, damage or injury to persons or property upon the streets or other public ways of the City adjoining such lot of land, by reason of the collapse of such building, house or structure or by the falling of parts thereof or of objects therefrom;

(2) Any tree, stack or other object that is caused or allowed to remain standing upon such lot of land in such condition that it will, if such condition is permitted to continue, endanger the life, limb or property of, or cause hurt, damage or injury to persons or property upon the streets or other public ways adjacent thereto, by the falling thereof or of parts thereof;

(3) An excavation or cellar on any such lot of land that is caused or allowed to be unguarded or remain in such a condition that it will, if such condition is permitted to continue, endanger the life, limb or property of, or cause hurt, damage or injury to persons or property upon the streets or other public ways adjacent thereto, by falling or being cast therein;

(4) There is caused or allowed an accumulation on any lot of land or in any building, house or structure, of earth, rubbish or other materials which will, if such condition is permitted to continue, attract and propagate vermin or insects, endangering the public health;

(5) Any building, house or structure that is caused or allowed to become so out of repair and dilapidated that it constitutes a fire hazard liable to catch on fire or communicate fire because of its condition and lack of repair;

(6) There is caused or allowed the accumulation on any lot of land or in any building, house or structure, of rubbish or other materials in an amount and in a condition that the same constitutes a fire hazard by reason of the likelihood of its catching on fire or communicating fire;

(7) There is caused or allowed the conduct of any business thereon or therein which, by reason of noxious odors generated thereby, or of smoke, dust and dirt being cast therefrom, endangers or is harmful to the public health, welfare or safety, or materially interferes with the peaceful and lawful use, comfort and enjoyment of a proximate or adjacent lot of land or structure thereon by the owners or occupants thereof;

(8) Any building, house or structure that is caused or allowed to become so out of repair and dilapidated that, due to lack of adequate maintenance or neglect, it endangers the public health, welfare or safety, or materially interferes with the peaceful enjoyment of adjacent property by the owners or occupants thereof;

(9) There is caused or allowed any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others;

(10) There is caused or allowed any placing, throwing or sweeping into any street, avenue, alley, park or public ground of any dirt, paper, nails, pieces of glass or board, fruit parings or skins, garbage, waste, leaves, clippings, ashes, cans, bottles, cartons, boxes, furniture, oil, parts of automobiles or any other matter of an unsightly or unsanitary nature, or the placing, throwing or sweeping of such matter upon any sidewalk or street crossing, or on any driveway, or upon the floor, stairway or hallway of any public building, theater, railway depot or railway platform or upon the property of another;

(11) There is caused or allowed any accumulation of paper, fruit parings or skins, garbage, waste, ashes, cartons, boxes or any other matter of an unsightly or unsanitary nature in such manner that such matter could be blown upon any street, avenue, alley, park, public ground or sidewalk or upon the property of another; or

(12) There is caused or allowed any obstruction or impediment to the flow of water in a swale or drainage ditch which was placed on the property of the owner during the development or improvement of said property by the owner or his or her predecessor in title, and said obstruction or impediment causes flooding to other property owners or otherwise endangers the comfort, repose, health, peace or safety of others.

(f) If the Director determines to take action to abate the nuisances as described in this section, the Director shall furnish the owner of the real estate from which the nuisance originates with a statement of the estimated cost of abating the same prior to the abatement, and a statement of the final cost as soon as the cost can be ascertained, and shall order the owner to pay the cost within such reasonable time as the Director shall fix. The Director shall collect such costs as set forth in this Chapter. The City may assess the real estate at any time after the City incurs the costs of preparing to abate and/or abating the nuisance.

634.04 NOTICE AND SERVICE.

(a) A written notice of a nuisance or order to abate shall be served on the owner, agent, lessee, or party in control of the property. The notice or order shall set forth the nature of the nuisance, a reasonable time determined by the Director within which the person shall abate the nuisance, and the statement that unless the nuisance is abated within the stated time the City may prosecute the owner, agent, lessee or party in control for failure to comply with the order of the Director, or may seek an order of a court requiring the abatement of the nuisance by such person.

(b) In addition to or in lieu of the procedure in subsection (a) of this Section, the Director may cause a written notice and order to be served on the owner or the agent of the owner of the property setting forth the nature of the nuisance, the estimate of the cost of abating the same if

done by the City, a reasonable time determined by the Director within which the owner shall abate the nuisance or pay the estimated cost to the City, and the statement that unless the nuisance is abated within the stated time it may be abated by the City and the cost of abatement assessed on the real estate involved.

(c) A notice or order shall be served by delivering it personally, leaving it at the person's usual place of business or residence, by posting it in a conspicuous place on the real estate involved, or by mailing it to the person, or notice may be published in a newspaper of general circulation within the City if it cannot be served in any of the other ways above mentioned.

634.05 ABATEMENT OF NUISANCE; COLLECTION OF COSTS; ASSESSMENT.

(a) If the nuisance is not abated within the required time, the Director may cause its abatement. The abatement of a nuisance may be conducted utilizing labor and materials provided by the Director of Public Service, other departments of the City, or by entering into a contract for the provision of abatement services in accordance with the ordinances and Charter of the City.

(b) The City may take such action as it deems necessary to collect the costs incurred by the City in preparing to abate and/or in abating the nuisance, including the assessment of such costs on the real estate on which the nuisance existed or the cause or source thereof was located.

(c) Regardless of the estimated cost of abating a public nuisance by the City as determined herein, the owner or agent shall be responsible for payment to the City of the actual costs incurred by the City in preparing to abate the nuisance if the City does not proceed with the abatement or in preparing to abate and abating the nuisance, plus the City's actual administrative costs applied as a percentage of the total cost incurred by the City, as approved annually by the Director of Finance. Should the City's actual costs in abating such nuisance be less than the estimate, and the owner has paid to the City an amount equal to such estimated amount, then the City shall refund to the owner the amount of the difference.

634.06 ABATEMENT ON CITY PROPERTY.

When the cause or source of a nuisance exists on property owned by the City the Director may abate the nuisance at the expense of the City, and no notice shall be required preliminary to the abatement.

634.07 VACANT AND ABANDONED STRUCTURES.

(a) Definitions:

(1) "Vacant": A structure shall be considered "vacant" for the purposes of this Chapter if it has not been occupied for a period of six (6) consecutive months or more, except a structure shall not be considered vacant if it is only seasonally not occupied and such period is less than twelve (12) months. A structure shall be considered "vacant" for the purpose of this Chapter even if it is being maintained on the exterior, and even if the owner of the property is actively attempting to sell or rent the property.

(2) "Abandoned": An "abandoned" structure is a structure that is not occupied for any period of time during which the City has not been able to communicate with or locate an owner or party with the legal authority to be in control of the property, and after the City has made reasonable attempts to communicate with or locate the owner or a party in control.

- (3) "Occupied": The term "occupied" shall mean the presence of a person or persons either:
 - A. Living in a structure and using some portion of such structure as a dwelling unit, as defined in the Housing Code of the City, or
 - B. Working in a structure and using some portion of the structure for the operation of a business.
- (4) "Property": The term "property" shall mean all portions of the real estate of a parcel in the City, including lands and structures of every type.

(b) Any property that contains a structure that is vacant or abandoned shall be considered a nuisance unless and until the owner, agent, lessee or party in control of the property shall, at minimum, take all actions required in this Section. The exterior of a vacant or abandoned structure, including the property and structure, shall be maintained in compliance with all applicable ordinances of the City, and the interior shall be maintained in a safe, secure and preserved manner to prevent and abate any threat to the health or safety of the public or anyone entering the structure, and to prevent and abate any threat of fire or health violation, or to its structural or historical integrity. The structure shall be winterized to prevent the freezing of pipes, and all points of entry shall be kept locked and secure. Sufficient property and liability insurance shall be maintained covering the property up to an amount at least equal to the fair market value of the property. The City shall provide the insurance carrier, if known, and any lien holder of record for the property a written notice of the requirements of this Section and that the property is considered a vacant or abandoned structure. The City may require an owner or agent of a vacant or abandoned property in violation of this Section or any other ordinance applicable to the property or structure to provide proof of insurance, and no owner or agent shall fail to provide such proof when so ordered.

(c) The Director may take any action necessary to inspect a vacant or abandoned property, and to abate a vacant or abandoned property nuisance, as authorized in this Chapter. Upon inspection of a vacant or abandoned structure, the Director may take any action authorized by law to ensure that the property, including the structure, is maintained according to the requirements of all applicable ordinances.

(d) No person, other than the owner, agent, lessee or other person with lawful control of or access to a vacant property that is deemed to be a nuisance pursuant to subsection (b) of this Section or abandoned pursuant to subsection (a) of this Section, may enter, remain on, or refuse to leave, or alter or destroy, the grounds or any structure on such property. Any person who violates such prohibition, shall be deemed to have entered, remained on, refused to leave, altered or destroyed the property of another without that person's consent, and without the privilege, authority or permission to do so, as such terms are used in Chapter 642 of the Codified Ordinances. Any person who violates this subsection may be ordered by the Police or any authorized person to leave the premises or the Police may arrest such person for violating this subsection or a provision of Chapter 642. Any vehicle remaining on the grounds of such a property that is not titled in the name of the owner or the ownership is unknown, or that is otherwise in violation of any provision of the Codified Ordinances, shall be deemed to be parked without the consent, authority or permission of the owner, agent, lessee or party in control of the property. The prohibitions in this subsection do not apply to any employee or agent of any

governmental entity, including the City, which has the lawful authority to enter such property, when such person is acting in their official capacity as an employee or agent.

(e) Any vacant property that has been deemed to be a nuisance or abandoned pursuant to this Section shall be considered to be in the custody of the City, and the City shall be deemed to be the lawful agent of the owner of the property, solely for the purposes of Chapter 642 of the Codified Ordinances. This subsection confers no authority to or duty upon the City over a property as an agent or custodian other than to protect such properties from trespassers or other persons who may enter such properties without the authority, consent or privilege to do so from the lawful owner, agent, lessee, or party in control or possession of such properties, and who may vandalize and damage the grounds or structures thereon leading to further deterioration and neighborhood blight. This subsection confers no new or different authority or duty on the City as to the condition, safety or security of any private property other than the specific authority conferred expressly herein, and such authority is in addition to, and not in derogation or substitution of, the authority of the City pursuant to its police powers. This subsection is not intended to, nor does it, require the City to be or make the City responsible or liable to any person for the condition, safety or security of any private property.

(f) The Director or the Director's designee may file a complaint with the Police Department or Prosecutor of the City based on any violation of subsection (d) of this Section or any violation under Chapter 642 of the Codified Ordinances against a property that is in the custody of the City or for which the City is deemed the agent of the owner pursuant to this Section. The Police or Prosecutor may take any lawful action including, but not limited to, the filing of a criminal complaint in Municipal Court against any person who violates any provision of Chapter 642 of the Codified Ordinances or subsection (d) of this Section.

Section 634.08 REGISTRATION OF VACANT PROPERTY

(a) An owner, agent or party in control of vacant property shall register the vacant property with the Director of Public Service on City forms. The registration statement shall include the following information:

- (1) Street address of the vacant property and the parcel number of the premises on which the vacant property is located.
- (2) Name, legal address and telephone number of the owner making the registration statement and of all persons with any legal interest in the vacant property.
- (3) Name, legal address and telephone number of a local agent responsible for the security, maintenance, and marketing of the vacant property.
- (4) Utility shut-off dates (water, gas and electric).
- (5) Weatherization date of the vacant property.

In case the registrant's legal address is outside Cuyahoga County, the registration statement shall also include the name, legal address and telephone number of a natural person designated by the owner as the authorized agent for receiving notices of code violations and for receiving service of process in connection with the enforcement of this Chapter. This agent must either reside or maintain an office in Cuyahoga County.

P.O. Boxes are not an acceptable address for purposes of this Chapter.

(b) Amendment. The registrant shall notify the Director of Public Service with 15 days of any change in the registration information by filing an amended registration statement with the Director of Public Service on City forms.

(c) Expiration. Registration is valid for one year from the date of the statement. The owner shall renew the registration upon expiration for as long as the property remains vacant.

(d) Fee. The fee for registering a vacant residential property is \$200.00 annually. The Fee for registering a vacant commercial property is \$300.00 annually. Unpaid fees may be levied as a special assessment against the vacant property and become a lien thereon.

(e) Reports. The owner, agent or party in control of vacant property shall inspect the property monthly for any violations of the Codified Ordinances and other applicable laws. A written report of such inspection shall be provided to the Director of Public Service upon request.

(f) Waivers exempting compliance with the provisions of this Chapter may be obtained in writing from the Director of Public Service under the following circumstances provided the property is maintained in safe, secure, and habitable condition:

(1) Residential structure is temporarily unoccupied while the occupant is on vacation.

(2) Residential structure is temporarily unoccupied while the occupant is in an alternative living arrangement.

(3) Residential or nonresidential structure is temporarily unoccupied while being extensively altered or repaired under proper and unexpired permits.

(4) Unoccupied residential or nonresidential structure is listed for sale and the owner is actively attempting to sell the property.

634.09 FORECLOSURE REGISTRATION.

(a) Any person or entity filing a civil case in any court for the purpose of foreclosing on any commercial, residential, institutional or any other property in the City shall, within ten (10) days after the filing date, register the action and property with the Director of Public Service and pay the fee, as set forth in this Section. A foreclosure filed by a governmental entity shall be exempt from this registration requirement.

(b) Registration of a foreclosure action and the property that is the subject of the foreclosure shall be made on the form or forms provided by the Director of Public Service.

(c) The fee for registration of a foreclosure action and the foreclosed property shall be one hundred fifty dollars (\$150.00) for a residential property (one or two family) and three hundred dollars (\$300.00) for a commercial property (all structures other than one or two family structures). The fee shall be paid at the time of notification. The fee for a foreclosure registration submitted after the 10th day following the filing of the foreclosure shall be three hundred dollars (\$300.00) for a residential property (one or two family) and five hundred dollars (\$500.00) for a commercial property (all structures other than one or two family). No registration shall be accepted or considered submitted unless and until the registration form has been completely and accurately filled out, and the applicable fee has been paid.

(d) If the building or structure on the property that is the subject of foreclosure is vacant at the time the foreclosure complaint is filed, then the person filing the foreclosure complaint shall notify the City of the name, address and contact information for the person who will be responsible for maintaining the property.

(e) If the building or structure on the property that is the subject of foreclosure becomes vacant at any time after the foreclosure complaint is filed, then the person who filed the foreclosure complaint shall notify the City of the name, address and contact information for the person who will be responsible for maintaining the property, and shall otherwise comply with the Parma Height Codified Ordinances.

634.10 EMERGENCY ABATEMENT.

(a) In cases in which the Director finds that a nuisance condition exists which constitutes an emergency involving immediate danger to human life or health, or an immediate threat of substantial and/or irreparable physical or economic damage to a structure, the Director may declare such condition a nuisance and order its immediate abatement, and the Director may take action necessary to immediately abate the violation constituting a nuisance without advance notice to the owner. Such action may include entering a property for the purposes of conducting an inspection, to the extent and in the manner allowed by law, ordering that the property be immediately vacated, ordering the cessation of utility service if necessary to protect life, health or property, and/or abate the violation constituting the nuisance.

(b) If the Director abates a nuisance pursuant to this Section, notice shall be provided to the owner within three (3) days after the start of the abatement work in the same manner as notice is required in this Section for non-emergency nuisance abatement.

634.11 APPEALS.

(a) Whenever an order or notice of violation is issued, or the City takes any other action pursuant to this Chapter, the person that is the subject of the order, notice or action may appeal such order, notice or action to the Building Committee as defined in Section 1379.04 Notice to Owner, within thirty (30) days from the date of the date of the order, notice or action.

(b) When a nuisance subject to this Chapter has not been abated within the time prescribed in the notice, the Director may authorize the immediate abatement of such nuisance by the City notwithstanding the pendency of an appeal of such order/notice to the Board of Appeals. If, as a result of such appeal, the Board overturns the order of the Director, then the owner shall not be obligated to pay to the City its costs to abate the nuisance.

634.12 RELATIONSHIP TO OTHER LAWS.

The authority to abate nuisances, and the procedures required herein, as set forth in this Chapter, shall be in addition to and shall not limit the authority to abate nuisances granted in the Administrative Code or in other ordinances of the City or the laws or Constitution of the State of Ohio.

634.99 ENFORCEMENT AND PENALTY.

(a) If a property owner, lessee, or party in control fails to comply with any provision of this Chapter, or any order issued pursuant to this Chapter, such failure shall be considered a first degree misdemeanor and, upon a plea of guilty or conviction thereof, shall be punished in accordance with Section 101.99 of the Administrative Code. Each day of violation shall be considered a separate offense.

(b) If a person or entity required to register a vacant property pursuant to Section 634.08 fails to register as required by that section, such failure shall be considered a first degree misdemeanor and, upon a plea of guilty or conviction thereof, shall be punished in accordance with Section 101.99 of the Administrative Code. Each day of violation shall be considered a separate offense.

(c) If a person or entity required to register a foreclosure and foreclosed property pursuant to Section 634.09 fails to register as required by that section, such failure shall be considered a first degree misdemeanor and, upon a plea of guilty or conviction thereof, shall be punished in accordance with Section 101.99 of the Administrative Code. Each day of violation shall be considered a separate offense.

(d) In the event of any violation of this Chapter, the City, in addition to any other action or remedy allowed by law, may bring a criminal action, may institute proper suit in equity or law to prevent or terminate any such violation or remedy such situation, and/or may take action itself or through contractors hired for such purpose to abate the violation or situation as set forth in this Chapter.