

2013
ORDINANCE NO. ~~2012-~~ 02

**AN ORDINANCE ESTABLISHING VACANT PROPERTY REGULATIONS
AND PRIORITY LIEN PROCEDURES**

WHEREAS, buildings that are indefinitely vacant, or indefinitely vacant and in a state of disrepair, or boarded, are public nuisances in that they contribute to the decrease in value of surrounding properties, precipitate disinvestment by neighboring owners, provide a location for criminal activity, undermine the aesthetic character of the neighborhood and Village, and have other undesirable effects; and

WHEREAS, vacant buildings, especially those which remain boarded for more than six (6) months, are unsightly and diminish neighboring property values and neighbors' sense of well-being, and are a public nuisance; and

WHEREAS, allowing certain buildings to remain indefinitely vacant even in the absence of code violations or boarding is detrimental to the public health, safety, and welfare; unreasonably interferes with the reasonable and lawful use and enjoyment of other premises within the neighborhood; may pose an extraordinary danger to police officers or firefighters entering the premises in time of emergency; and detracts from the appearance and good order of the neighborhood; all of which effects are especially associated with such buildings which have been vacant for over two years; and

WHEREAS, registration of vacant properties and implementation of a maintenance plan will discourage property owners from allowing their properties to remain indefinitely vacant, or indefinitely vacant and in a state of disrepair, and will thereby provide a basis for the return of vacant properties to the housing stock.

WHEREAS, the Village of Winnebago has the authority to regulate the maintenance of properties and buildings within the Village in order to protect the public health, safety, and welfare of its citizens; and

WHEREAS, the definition, prohibition, and abatement of public nuisances pertain to the government and affairs of the Village of Winnebago; and

WHEREAS, the Village has statutory power to define, prohibit, and abate public nuisances pursuant to 65 ILCS 5/11-60-2 of the Illinois Municipal Code; and

WHEREAS, the Village Board adopts the "broken window" concept among the rationales for this ordinance, with the "broken window" concept being that one broken window, left unrepaired, leads to more broken windows, as it gives the appearance that no one cares or protects the property, that that building becomes increasingly more deteriorated, and that the deterioration may have a ripple effect; and

WHEREAS, the abatement of nuisance caused by vacant buildings, repair and rehabilitation of vacant properties and their subsequent occupancy is in the best interests of the citizens of Winnebago; and

WHEREAS, an ordinance providing for the declaration of certain boarded and/or vacant buildings as a public nuisance and providing for their abatement is a means for the Village to use in maintaining sanitation and health standards, preventing crime, and avoiding fire, health, and safety hazards, and minimizing or eliminating the effect such buildings have on the personal and economic well-being of the neighborhood; and

WHEREAS, various state statutes authorize the Village to provide for the removal of certain nuisances from private properties within the Village, including cutting and removal of neglected weeds, grass, trees, and bushes, 65 ILCS 5/11-20-7, pest control activities, 65 ILCS 5/11-20-8, removal of infected trees, 65 ILCS 5/11-20-12, removal of garbage, debris, and graffiti, 65 ILCS 5/11-20-13, and removal, securing, and enclosing abandoned residential properties, 65 ILCS 5/11-20-15.1; and

WHEREAS, the Village incurs costs in abating these nuisances by performing property maintenance activities on these properties; and

WHEREAS, Section 5/ 11-20-15 of the Illinois Municipal Code (65 ILCS 5/11-20-15), authorizes municipalities to record traditional liens against a property for these nuisance abatement and property maintenance costs; and

WHEREAS, the Illinois General Assembly previously adopted Public Act 96-856, effective March 1, 2010, authorizing municipalities to record "priority liens" against abandoned residential properties for costs incurred in certain property maintenance activities that would be senior to all other liens with the exception of tax liens; and

WHEREAS, the corporate authorities of the Village of Winnebago deem it to be in the interest of the public health, safety, and welfare of the residents of the Village to set forth specific registration requirements for vacant buildings, as well as a procedure for liens for property maintenance activities;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Winnebago, as follows:

Section 1: Recitals. The foregoing recitals shall be, and are hereby, incorporated into and made a part of this ordinance as if fully set forth in this Section 1.

VACANT BUILDING AND PROPERTY REGULATIONS:

(A) **Declaration of Policy.** The purpose of this section of this ordinance is to protect the public health, safety, and welfare by enactment of this section which:

1. Establishes a program for identification, registration, and regulation of buildings which are or become vacant on and after the effective date of this ordinance.
2. Determines the responsibilities of owners of vacant buildings.
3. Provides for administration, enforcement, including abatement of public nuisances, and imposition of penalties.

This ordinance shall be construed liberally to effect its purposes.

(B) Other Ordinances. This ordinance shall not be construed to prevent the enforcement of other applicable ordinances, codes, legislation, and regulations which prescribe standards other than are provided herein, and in the event of conflict, the most restrictive shall apply.

(C) Definitions. Unless otherwise expressly stated or clearly indicated by the context, the following terms shall, for the purpose of this ordinance, have the meanings indicated in this section:

BOARDED BUILDING: A building which has had, in a manner intended to be temporary or permanent, any or all openings, which openings are windows or doors which were present for the purpose of light, ventilation, or egress, some material whether opaque, solid or transparent, affixed to such openings, from the interior or exterior of the building, for the purpose of securing or preventing access or damage to the building or its components.

BUILDING: Any structure occupied or intended for supporting or sheltering any occupancy.

DANGEROUS BUILDING: For the purpose of this ordinance, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, or safety of the public, or its occupants are endangered.

1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
2. Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
3. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Village's Zoning and Building Code for new buildings of similar structure, purpose, or location.
4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Village's Zoning and Building Code for new buildings of similar structure, purpose, or location.
5. Whenever any portion, or member, or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

6. Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one half (1/2) of that specified in the Village's Zoning and Building Code for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the Village's Zoning and Building Code for such buildings.
7. Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
10. Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.
11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage, or deterioration of its supporting member of members, or 50 percent damage or deterioration of its nonsupporting members, enclosing, or outside walls or coverings.
12. Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
13. Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Village's Zoning and Building Code or of any law or ordinance of this state or jurisdiction relating to the condition, location, or structure of buildings.

14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member, or portion less than 50 percent, or in any supporting part, member, or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.
15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the applicable health officer to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.
16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Win-Bur-Sew fire department to be a fire hazard.
17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building, or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

OWNER: Any person, agent, operator, firm, or corporation having a legal or equitable interest in the property, or recorded in the official records of the state, county, or municipality as holding title to the property, or otherwise having control of the property, including the Guardian of the Estate of any such person, Trustee of a Trust, and the Executor or Administrator of the estate of such person if ordered to take possession of real property by a court.

PERSON: Includes a corporation, a partnership, or other entity, as well as an individual.

PREMISES: A lot, plot, or parcel of land including any structure thereon.

PUBLIC NUISANCE: Includes the following:

1. The physical condition, or uses of any building regarded as a public nuisance at common law, under the Illinois Compiled Statutes, or under this ordinance; or
2. Any physical condition, use, or occupancy, or any building or its

- appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, and unsafe fences or structures; or
3. Any building which has unsanitary sewerage or plumbing facilities; or
 4. Any building designated by the Village Building Official as unsafe for human habitation or use; or
 5. Any building which is manifestly capable of being a fire hazard, or manifestly unsafe or insecure as to endanger life, limb, or property; or
 6. Any building which is unsanitary, or which is littered with rubbish or garbage, or which has an uncontrolled growth of weeds; or
 7. Any building that is dangerous, in a state of dilapidation, deterioration, or decay; faulty construction; open or vacant and the doors, windows, or other openings are boarded up or secured, by any means other than conventional methods used in the design of the building, or permitted for new construction of similar type; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure, and dangerous to anyone on or near the premises; or
 8. Any building defined as a "dangerous building" by this ordinance, as it may be amended.

UNOCCUPIED BUILDING: A building or portion thereof which lacks the habitual presence of human beings who have a legal right to be on the premises, including buildings ordered vacated by the Village Building Official pursuant to authority granted to him by this ordinance.

In determining whether a building is "unoccupied", the Village Building Official may consider these factors, among others:

1. A building at which substantially all lawful residential or business activity has ceased.
2. The percentage of the overall square footage of occupied to unoccupied space, or the overall number of occupied and unoccupied units shall be considered.
3. The building is substantially devoid of contents. The condition and value of fixtures or personal property in the building are relevant to this determination.
4. The building lacks utility services, i.e., water, sewer, electric, or natural gas.
5. The building is the subject of a foreclosure action.

6. The building is not actively for sale as part of a contractual agreement to sell the building, the building lacks "for sale", "for rent" or similar signage.
7. The presence or recurrence of uncorrected code violations.

VACANT BUILDING: A building or portion of a building which is:

1. Unoccupied and unsecured; or
2. Unoccupied and secured by boarding or other similar means; or
3. Unoccupied and a dangerous structure; or
4. Unoccupied and condemned by the Village Building Official pursuant to applicable provisions of this ordinance; or
5. Unoccupied and has multiple code violations; or
6. Unoccupied and the building or its premises has been the site of unlawful activity within the previous six (6) months; or
7. Condemned by the Village Building Official and unlawfully occupied; or
8. Unoccupied for over one hundred eighty (180) days and during which time the Village Building Official has issued an order to correct public nuisance conditions and the same have not been corrected in a code compliant manner; or
9. Unoccupied for over two (2) years.
10. An "abandoned residential property," as defined in 65 ILCS 5/11-20-15.1 as a residential dwelling unit that has been unoccupied by any lawful occupant or occupants for at least 90 days, and for which after such 90 day period the Village has made good faith efforts to contact the legal owner or owners of the property or, if known, the agent of the owner, and no contact has been made.

But not including:

Unoccupied buildings which are undergoing construction, renovation, or rehabilitation and which are in compliance with all applicable ordinances, codes, legislation, and regulations, and for which construction, renovation, or rehabilitation is proceeding diligently to completion.

VILLAGE BUILDING OFFICIAL: The Village Building Official or his or her designee.

(D) Determination. Within sixty (60) days after the effective date of this ordinance, the Village Building Official shall evaluate all buildings in the Village he believes to be unoccupied on the effective date of this ordinance and make a determination for each as to

whether the building is a "vacant building" within the meaning of this ordinance. The Village Building Official may determine that a building which meets any of the criteria set forth in this section is not to be regulated under this ordinance for a stated period, if upon consideration of reliable, substantiated, and sufficient evidence, he or she determines that regulation of the building under this ordinance would not serve the public health, welfare, and safety, and makes written findings in support of his decision. The determination shall be in writing and shall state the factual basis for the determination. For buildings the Village Building Official determines to be "vacant buildings", notice of the determination will be sent to the last taxpayer of record listed on the most recent Winnebago County tax roll. The notice of determination shall be sent first class United States mail. Failure of delivery shall not excuse a person from complying with this ordinance. The Village Building Official may personally serve or cause personal service of the notice of determination. Any person making such service shall execute an affidavit attesting to the facts of service. The Village Building Official shall maintain a record of such mailing for each notice of determination sent.

The notice shall specify a date and time on which the owner shall allow for a code compliance inspection of the interior of the vacant building to determine the extent of compliance with Village property, building codes, health, fire, water, and sewer codes. The owner shall pay the five hundred dollar (\$500.00) inspection fee to the Village within thirty (30) days of the inspection. An unpaid fee shall be a lien upon the premises.

The notice shall contain a statement of the obligations of the owner of a building determined to be a vacant building, a copy of the registration form the owner is required to file pursuant to this ordinance, and a notice of the owner's right to appeal the Village Building Official's determination.

(E) Appeal of Determination. An owner of a building determined by the Village Building Official to be a vacant building as provided for in this ordinance may appeal that determination to the Village Building Official, such appeal shall be in writing and shall be filed with the Village Building Official within fifteen (15) days of the date of mailing of the notice of determination. The filing of an appeal stays the owner's obligation to register his building as required by this ordinance. The appeal shall contain a complete statement of the reasons the owner disputes the Village Building Official's determination, shall set forth specific facts in support thereof, and shall include all evidence the owner relies upon to support the appeal. The Village Building Official shall decide the appeal on the basis of facts presented by the owner in his or her written appeal and the Village Building Official's written determination.

1. The burden is upon the owner to present sufficient evidence to persuade the Village Building Official that had the evidence been known to the Village Building Official at the time the Village Building Official made the determination, the Village Building Official would more likely than not have determined that the subject building was not a "vacant building" within the meaning of this ordinance.
2. The Village Building Official shall send written notice of his decision to the owner within ten (10) days of his or her receipt of the appeal. The Village Building Official may, but is not required to, seek additional information from the owner. The Village Building Official

may, upon written notice thereof to the owner, take no more than ten (10) additional business days, to decide the appeal if he or she determines that such additional time is required for consideration of the appeal.

3. An owner who wishes to challenge applicability of this ordinance to his/her building without the Village Building Official's determination having been made, shall set forth specific facts to support nonapplicability in a writing to the Village Building Official. In the event the Village Building Official determines that the subject building is a "vacant building", the owner shall have the right to appeal the Village Building Official's determination to the Village Building Official as provided for herein.

(F) **Obligation to Register.** The owner of a building who knows, or from all the facts and circumstances should know, that his or her building is or has become a "vacant building" within the meaning of this ordinance after the effective date of this ordinance, or the owner of a building, which the Village Building Official determines at any time to be a "vacant building", or the owner of a building whose appeal from the Village Building Official's determination has been denied by the Village Building Official, shall take the actions provided for in this section within fifteen (15) calendar days after either the date of the Village Building Official's notice of determination or occurrence of the facts which would cause a reasonable person to believe that the building was a "vacant building", or denial of the appeal, whichever is applicable. Registration does not exonerate the owner from compliance with all applicable codes and ordinances, including this ordinance, nor does it preclude any of the actions the Village is authorized to take pursuant to this ordinance or elsewhere in the Village's ordinances, codes, or regulations.

1. **Registration Requirements:**
 - (a) Register the building with the Village Building Official, on a form provided by the Village of Winnebago and pay the two hundred dollar (\$200.00) annual nonprorated vacant building registration fee. The form shall include, as a minimum, the name, street address, and telephone number of the owner; the case name and number of any litigation pending concerning or affecting the building, including, but not limited to, bankruptcy cases; and the name, street address, and telephone number of all persons with any legal interest in the building or the premises. The form shall require the owner to identify a natural person twenty one (21) years of age or older who maintains a permanent address in Winnebago County, Illinois, to accept service on behalf of the owner with respect to any notices the Village of Winnebago sends pursuant to this ordinance, or service of process in any proceeding commenced to enforce any provision of this ordinance, and file with the Village Building Official on the registration form, the name, address, telephone number, of said person. A street address is required. A post office box is also an acceptable address provided the street address is also listed.
 - (b) Renew the vacant building registration each year on the anniversary date of the first filing for the time the building remains vacant, and pay the

required two hundred dollar (\$200.00) annual fee; and

- (c) File an amended registration within fifteen (15) days of any change in the information contained in the annual registration. A new registration is required for any change in ownership whatsoever.
2. **Notice: Inspection:** The form shall require the owner to indicate his or her "acceptance of notice by posting" consenting to service of notices sent or required to be sent, pursuant to this ordinance, by posting on the building if the owner fails to renew the registration if required, or maintain as current with the Village Building Official the information required regarding the person designated to accept notice and service of process.

The owner shall allow for a code compliance inspection of the interior of the vacant building and shall pay the five hundred dollar (\$500.00) fee therefore within thirty (30) calendar days of the inspection. Such inspection will determine the extent of compliance with Village property, building codes, health, fire, water, and sewer codes. The Village shall send the inspection report to the owner within thirty (30) days.

3. **Insurance:** Obtain liability insurance and maintain such insurance for as long as the building is vacant, and file evidence of such insurance with the Village Building Official, as follows: five hundred thousand dollars (\$500,000.00) for a vacant residential building of one to three (3) units; seven hundred fifty thousand dollars (\$750,000.00) for a vacant residential building of four (4) to eleven (11) units; one million dollars (\$1,000,000.00) for a vacant residential building of twelve (12) to forty-eight (48) units; two million dollars (\$2,000,000.00) for a vacant residential building of more than forty eight (48) units; and two million dollars (\$2,000,000.00) for a vacant manufacturing, industrial, storage, or nonresidential commercial building.
4. **Vacant Building Plan:** At the time a building is registered as required herein, the owner shall submit a vacant building plan. The Village Building Official may prescribe a form for the plan. If the owner fails to submit the plan as provided for by this ordinance, the Village Building Official may determine the plan. The plan shall contain the following as a minimum:
- (a) A plan of action to repair any doors, windows, or other openings which are boarded up or otherwise secured by any means other than conventional methods used in the design of the building or permitted for new construction or similar type. The proposed repair shall result in openings being secured by conventional methods used in the design of the building, or by methods permitted for new construction of similar type with board removed. Boarding shall be accomplished with materials and methods described by the Village Building Official and available from the Village Building Official. The owner shall maintain the building in an enclosed and secure state until the building is reoccupied or made available for immediate occupancy. If the owner demonstrates that securing of the building will provide adequate

protection to the public, the Village Building Official may waive the requirement of an enclosure.

- (b) For buildings and premises thereof which are determined by the Village Building Official as being or containing public nuisances, as defined in this ordinance, then the vacant building plan shall contain a plan of action to remedy such public nuisance(s).
 - (c) A time schedule identifying a date of commencement of repair and date of completion of repair for each improperly secured opening and nuisance identified by the Village Building Official.
 - (d) When the owner proposes to demolish the vacant building, then the owner shall submit a plan and time schedule for such demolition.
 - (e) A plan of action to maintain the building and premises thereof in conformance with this ordinance.
 - (f) A plan of action, with a time schedule, identifying the date the building will be habitable and occupied or offered for occupancy or sale. The time schedule shall include date(s) of commencement and completion of all actions required to achieve habitability. No plan which provides for compliance with this ordinance or, which will not, as determined by the Village Building Official, achieve such compliance, within six (6) months, in the case of a vacant boarded building, and two (2) years, in the case of a vacant, unboarded, and code compliant building, shall be approved.
 - (g) All premises upon which unoccupied or vacant buildings are located, and the exteriors, shall at all times be maintained in compliance with this ordinance.
 - (h) Exterior lighting according to standards established by the Village Building Official and available from the Village Building Official.
5. Security Guard Service: On written notice of the Village Building Official, provide bonded, licensed, and insured security guard service at the building between the hours of three o'clock (3:00) p.m. and eight o'clock (8:00) a.m. Such service shall remain in place until the Village Building Official gives written notice that the service is no longer required. Such service shall be required when the Village Building Official makes a written determination that the vacant building constitutes a fire hazard, is otherwise dangerous to human life or the public welfare, and involves illegal or improper use, occupancy, or maintenance under such conditions that boarding and securing the building are insufficient to prevent the actual or threatened harm.
6. Signage: Affixed to any building which is boarded, no smaller than two feet by two feet (2' x 2') and compliant with the Village's sign regulations, shall be signage providing the following information: The name, address, and telephone

number of the owner, and in addition, for buildings which are the subject of a foreclosure action, the name, address, and telephone number of the plaintiff and the plaintiff's attorney, if any, in the foreclosure action. The sign must be placed so that its message is legible from the public way. A sign permit must be obtained so the Village is aware of the posting, but the sign application fee shall be waived.

7. Approval of Plan:

(a) Review Building Plan: The Village Building Official shall review the proposed vacant building plan in accordance with the standards below. The Village Building Official shall send notice to the owner of the vacant building of his determination.

(b) Standards For Plan Approval: In considering the appropriateness of a vacant building plan, the Village Building Official shall include the following in his or her consideration and shall make written findings as to each:

- (1) The purposes of this ordinance and intent of the Village Board to minimize the time a building is boarded or otherwise vacant.
- (2) The effect of the building and the proposed plan on adjoining property.
- (3) The length of time the building has been vacant, as can best be approximated.
- (4) The presence of any public nuisances on the property.
- (5) The likelihood that the plan or portion(s) thereof will prevent or ameliorate the condition it is designed to address.

8. Authority to Modify Plan, Right of Appeal: The Village Building Official shall, upon notice to the vacant building owner, have the right to modify the vacant building plan by modifying the dates of performance, the proposed methods of action, or by imposing additional requirements consistent with this ordinance he or she deems necessary to protect the public health, safety, or welfare.

9. Failure to Comply With Plan: Failure to have an approved plan within thirty (30) days of filing the registration form, or failure to comply with the approved plan, shall constitute a violation of this ordinance, subjecting the owner of the building to penalties as provided in this ordinance, and to any remedies the Village may avail itself of as provided for herein and elsewhere in Village codes or ordinances, including, but not limited to, an action to compel correction of property maintenance violations.

(G) Other Enforcement. The registration of a vacant building shall not preclude action by the Village to demolish or to take other action against the building pursuant to other provisions of this ordinance, or other applicable legislation, including the activities authorized by subsection (H).

(H) Property Maintenance.

1. **Nuisance Abatement.** The Village is authorized to perform or provide for property maintenance activities to abate a nuisance caused by a vacant building, including the following:
 - (a) Cutting and removal of neglected weeds, grass, trees, and bushes as authorized by Ordinance No. 00-06 and 65 ILCS 5/11-20-7;
 - (b) Pest control activities, as authorized by 65 ILCS 5/11-20-8;
 - (c) Removal of infected trees as authorized by section 5-26-4 of the Village Code and 65 ILCS 5/11-20-12;
 - (d) Removal of garbage and debris as authorized by Ordinance No. 02-04, and 65 ILCS 5/11-20-13; and
 - (e) Removal, securing, and enclosing abandoned residential properties, as authorized by 65 ILCS 5/11-31-1.01.
2. **Charges for Nuisance Abatement.** The Village shall have the authority to collect from the property owner the costs incurred in performing the property maintenance activities to abate the nuisances described in this ordinance. The Village shall send a bill for the cost to the property owner, his agent, legal representative, or occupant in legal possession or control of the premises.
3. **Traditional Lien Procedure.** If a bill sent pursuant to paragraph 2 is not paid in full within thirty (30) calendar days of the date of the bill, the Village shall have the authority to file and record a lien against the property, pursuant to Section 11-20-15 of the Illinois Municipal Code, 65 ILCS 5/11-20-15. If, for any one property, the Village engaged in any nuisance abatement activity described in paragraph 1 on more than one occasion during the course of one year, then the Village may combine any or all of the costs of those activities into a single notice of lien. The lien must be filed in accordance with the lien procedure established by the specific code provision of which the property is alleged to be in violation or, if no such procedure exists, then the following procedure shall apply:
 - (a) **Notice of Lien.** The Village or person performing the service by authority of the Village, in its, or his or her own name, may file a notice of lien in the office of the recorder of deeds in the county in which the real estate is located. The notice of lien shall be filed within one year after the cost and expense is incurred. If, for any one property, the Village engaged in any nuisance abatement activity described in Paragraph 2 on more than one occasion during the course of one year, then the Village may combine any or all of the costs of those activities into a single notice of lien.

The notice of lien shall consist of a sworn statement setting forth:

- (1) A description of the real estate that sufficiently describes the parcel; and
- (2) The amount of the cost and expense incurred or payable for the activities; and
- (3) The date or dates when such cost and expense was incurred by the Village or someone working on behalf of the Village; and

After recording, the notice of lien shall be sent by certified mail to the property owner, his agent or legal representative or occupant in legal possession or control of the premises and, if different, to the person who received the tax bill for the preceding year.

- (b) **Release of Lien.** Upon payment of the cost after the notice of lien has been filed as provided herein, the lien shall be released by the Village or person in whose name the lien has been filed, and the release shall be recorded of record in the same manner as recording the notice of lien.
 - (c) **Foreclosure of Lien.** Subsequent to the filing of the above-described lien, the Village may cause to be filed a complaint for foreclosure of such lien, or upon becoming a Defendant in a pending lawsuit affecting the premises or real estate, by answer to the complaint, or in the nature of an intervening petition or cross-complaint, the Village may proceed in its corporate name to foreclose such lien. An action to foreclose a lien under this ordinance must be commenced within two years after the date of filing notice of lien. The property subject to a lien arising under this article shall be sold for nonpayment of the same, and the proceeds of such sale shall be applied to pay the monies owing the Village.
4. **Priority Lien Procedure.** The priority lien procedure described in this Paragraph 4 shall apply only to costs incurred for activities performed on abandoned residential properties, as defined herein, and is an alternative to the traditional lien authorized by paragraph 3. If a bill sent pursuant to paragraph 2 is not paid in full within sixty (60) days of the date of the bill, the Village shall have the authority to file and record a priority lien against the property, pursuant to Section 11-20-15.1 of the Illinois Municipal Code, 65 ILCS 5/11-20-15.1, in the following manner:
- (a) **Notice of Lien.** The Village or the person performing the service by authority of the Village, in its, his or her own name, may file a notice of a priority lien in the office of the recorder of deeds in the county in which the real estate is located. The notice of lien shall be filed within one year after the cost and expense is incurred. If, for any one property, the Village engaged in any nuisance abatement activity described in paragraph 2 on more than one occasion during the course of one year, then the Village may combine any or all of the costs of those activities into a single notice of lien.

The notice of lien shall consist of a sworn statement setting forth:

- (1) A description of the abandoned residential property that sufficiently describes the parcel; and
- (2) The amount of the cost incurred or payable for the activities; and
- (3) The date or dates when such cost was incurred by the Village or someone working on behalf of the Village; and
- (4) A statement that the lien has been filed pursuant to one or more of the property maintenance activities described in Paragraph 2 and authorized by 65 ILCS 5/11-20-7(d), 65 ILCS 5/11-20-8(d), 65 ILCS 5/11-20-12(d), 65 ILCS 5/11-20-13(e), 65 ILCS 5/11-31-1.01, as applicable.

After recording, the notice of lien shall be sent by certified mail to the property owner, his agent or legal representative, or occupant in legal possession or control of the premises and, if different, to the person who received the tax bill for the preceding year.

The Village may not file a lien if the lender has provided notice to the Village that the lender has performed, or will perform, remedial actions; provided, however, that the remedial actions must be performed or initiated in good faith within 30 days of the lender's notice to the Village.

- (b) Recordkeeping. To enforce a lien pursuant to this paragraph 4, the Village must maintain contemporaneous records that include, at a minimum:
 - (1) a dated statement of a finding by the Village that the property has become abandoned residential property;
 - (2) the date when the property was first observed to be unoccupied by any lawful occupant;
 - (3) a description of the actions taken by the Village to contact the legal owner of the property, or if known, any agent of the owner;
 - (4) a statement that no contacts were made with the legal owner or, if known, any agent of the owner;
 - (5) a dated certification by a Village official of the necessity and specific nature of the work performed;

- (6) a copy of the agreement with the person or company performing the work and the rates and estimated cost of the work, if applicable;
 - (7) detailed invoices and payment vouchers for the work; and
 - (8) a statement whether the work was competitively bid, and if so, a copy of all proposals submitted by the bidders.
- (c) **Release of Lien.** Upon payment of the cost after the notice of lien has been filed as provided herein, the lien shall be released by the Village or person in whose name the lien has been filed, and the release shall be recorded of record in the same manner as recording the notice of lien.
- (d) **Enforcement of Lien.** A lien under this paragraph 4 is enforceable by the Village, or entity or person who performs work on behalf of the Village, at the hearing for confirmation of the foreclosure sale of the abandoned residential property and is limited to a claim of interest in the proceeds of the sale. The priority lien is superior to all other liens and encumbrances, except tax liens.

(I) **Certification.** A certificate of code compliance for vacant buildings issued by the Village, and payment in full of all fees imposed pursuant to this ordinance are required prior to any occupancy of a vacant building.

(J) **Boarding of Buildings.** It is the policy of the Village of Winnebago that boarding is a temporary solution to prevent unauthorized entry into a vacant building and that boarded buildings are a public nuisance. A vacant building may not remain boarded longer than six (6) months unless an extension of that time is part of a plan approved by the Village Building Official. A vacant building which is unboarded and code compliant and for which boarding is determined by the Village Building Official on the basis of police reports, citizen complaints, information of other type considered reliable by reasonable persons, to not be required to prevent unauthorized entry, may not remain vacant for more than two (2) years without an approved plan for occupancy, sale, demolition, or other disposition of the building.

(K) **Enforcement and Penalties.**

1. Any person found to have violated any provision of this ordinance shall be subject to a minimum fine of one hundred dollars (\$100.00) per day per violation to a maximum of seven hundred fifty dollars (\$750.00) per day per violation, in addition to any other legal or equitable remedies available to the Village. Such other remedies include, but are not limited to, injunctive relief, application to a court of competent jurisdiction for a receiver, demolition, or condemnation, contracting for the repair or purchase of the premises, or foreclosure of any lien the Village may have thereon.
2. A separate and distinct offense shall be committed each day on which such person or persons shall violate the provisions of this ordinance.

3. Nothing herein contained shall prohibit the Village from immediately condemning as provided for in this ordinance, a building or taking other immediate action upon a determination that the building is public nuisance, or poses an imminent danger to the occupants of the building, or the public, health, safety and welfare.

Section 2: Effective Date. This ordinance shall be in full force and effect from and after its passage, approval and recording at the Winnebago County Recorders Office as provided by law.

APPROVED:

Franklin J. Eubank, Jr., President of the Board of Trustees
of the Village of Winnebago, Illinois

ATTEST:

Sally Jo Huggins, Village Clerk

PASSED: 1-7-13

APPROVED: 1-7-13

RECORDED: _____

PREPARED BY:

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Attorney for the Village of Winnebago