



**PLANNING COMMISSION MEETING AGENDA**  
**Council Chambers, 1000 Laurel Street**

**June 12, 2019**  
**Wednesday**

**Regular Meeting**  
**7:00 p.m.**

- 1. Call to Order and Flag Salute**
- 2. Roll Call**
- 3. Additions/Deletions to Agenda**
- 4. Citizen Participation**
- 5. Approval of Minutes**
  - A. May 8, 2019 Regular Meeting
- 6. Regular Agenda**
  - A. Vacant Building draft Ordinance
- 7. Commissioner Reports**
- 8. Adjournment**

Planning Commission may add and take action on other items not listed on this agenda.

If you need ADA accommodations, please contact City Hall at (253) 517-2705 at least 24 hours prior to the meeting.

Thank you.

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## PLANNING COMMISSION MINUTES

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**Regular Meeting**  
**Wednesday, May 8, 2019**  
**7:00 p.m.**

### **1. CALL TO ORDER AND FLAG SALUTE**

Chair LaVergne called the meeting to order at 7:00pm and Commissioner Balsley lead the flag salute.

### **2. ROLL CALL**

Present: Chair LaVergne, Vice Chair Whalen, Commissioners Balsley, Gillespie, Sweat and White.

Absent: Commissioner Boyle

Staff Present: Trisha Summers, City Clerk

**MOTION TO EXCUSE LaVergne and White (Gillespie/Whalen) Passed 6/0**

### **3. ADDITIONS, DELETIONS TO AGENDA**

Commissioner Whalen asked to add a discussion about minutes. Added to Regular Agenda item 6B.

### **4. CITIZEN PARTICIPATION**

None

### **5. APPROVAL OF MINUTES**

A. April 10, 2019 as amended and presented at tonight's meeting

**MOTION TO APPROVE MINUTES (Whalen/Sweat) – Passed 6/0.**

## **6. REGULAR AGENDA**

### **A. Vacant Building Draft Ordinance**

Commissioners continued working through the draft copy of ordinance where they left off in the middle of page 10 “Delinquent Registration...”. Discussion ensued about notice prior to enforcement, pro-rating registration fees, Zoning and Definitions and correcting grammatical errors. Commissioners inquired whether or not city could track registrations using Bias and the utility billing module.

Next step is to present to the Attorney for clarification on outstanding questions and bring answers back to June 12<sup>th</sup> meeting.

### **B. Planning Commission Minutes**

Commissioners discussed wanting minutes more detailed regarding what subject they are working on and a general explanation of that discussion. Commissioners also requested that meeting packets and audio be posted to the City website. Commissioners would like less emphasis on Commissioner reports regarding things that don't pertain to planning commission.

## **7. COMMISSIONER REPORTS**

### Chair LaVergne-

- June 1<sup>st</sup> is Bingo at the MAC to fundraise for Milton Days

### Vice Chair Whalen-

- No report

### Commissioner Sweat

No report

### Commissioner Balsley

- Old Coots on Scoots and Styron Foundation both having community events 5/10.

### Commissioner Gillespie

- No report.

### Commissioner White

- No report.

## **8. ADJOURNMENT**

The meeting was adjourned at 8:53 PM.

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Chair Ryan LaVergne

Ordinance: Register/Establish Fees for Vacant Buildings in ~~Up-Town and Business District~~ the city of Milton, Washington

ORDNANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON, TO CREATE A POLICY TO IDENTIFY AND REGISTER VACANT BUILDINGS; TO ESTABLISH A PROCESS TO IMPROVE COMMUNITY SAFETY AND PROMOTE THE WELL BEING OF AREA BUSINESS; TO REPEAL ANY ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO DECLARE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MILTON, WASHINGTON:

       **PURPOSE**

The purpose of this article is to protect the public health, safety and welfare of Milton by establishing a program for identification and registration of vacant commercial buildings, determining the responsibilities of owners of vacant commercial buildings and structures, and providing for administration, enforcement, and penalties.

       **ADMINISTRATION**

This chapter will be administered by the building official, who may adopt administrative rules and regulations consistent with its terms. The building official (and his/her designee), or code enforcement officer, or both are authorized to enforce this chapter. (Ord. \_\_\_\_\_)

       **DEFINITIONS**

“City” means the city of Milton, its officers, employees, and agents.

“Commercial activity” means having the objective of supplying commodities (goods and services) and ancillary business functions. **(Should we use MMC 17.08.130?)**

“Commercial building” means a building with more than fifty (50) percent of its floor space used for commercial activity. For the purposes of this section, floor space shall be designated as the area on the main or street level of the building. **(Do we need this definition?)**

“Commercial space” means any portion of a structure in the City of Milton that is not intended for residential use.

“Dangerous structure” means a structure that is potentially hazardous to persons or property, including, but not limited to: (a) a structure that is in danger of partial or complete collapse; (b) a structure with any exterior parts that are loose or in danger of falling; or (c) a structure with any parts, such as floors, porches, railings, stairs, ramps, balconies or roofs, that are accessible and that are either collapsed, in danger of collapsing or unable to support the weight of normally imposed loads.

“Occupied” means a permitted, nonresidential use that is physically located and lawfully operating in a commercial space for at least six consecutive months.

**Should we keep only the terms that we use in code in this ordinance?**

“Owner” means the person, persons, or entity shown to be the owner of record on the records of the Pierce County or King County Register of Deeds, those identified as the owner or owners on a vacant building registration form, holder of an unrecorded contract for deed, a mortgage or vendor in possession, assignee of rents, receiver, executor, trustee, lessee, other person, firm or corporation in control of the freehold of the premises or lessor state therein. Any such person, person’s or entity, shall have a joint and several obligations for compliance with the provisions of this article.

“Responsible person” means any person, firm, association, corporation or any agent ~~thereof, owning, leasing, renting or having lawful possession of a structure in the City of Milton~~ of the owner.

“Secured by other than normal means” means a building secured by means other than those used in the design of the building.

“Unoccupied” means a building which is not being used for a legal occupancy. The storage of products and materials does not constitute occupancy unless authorized by the zoning ordinance of the city.

**\*\*Attorney, please review definition\*\***

**(Still in question and request this to be looked at by city attorney)**

“Unsecured” means a building or portion of the building that is open to entry by unauthorized persons without the use of tools.

“Vacant commercial building” means a ~~building structure~~ or portion of a ~~building~~ structure that is:

- (1) Unoccupied and secured;
- (2) Unoccupied and unsecured;
- (3) Unoccupied and secured by other than normal means;
- (4) Unoccupied and a dangerous structure;
- (5) Unoccupied and condemned;
- (6) Unoccupied and has city code violations; or
- (7) Condemned and illegally occupied.

VACANT COMMERCIAL BUILDING does not mean any structure being constructed pursuant to a valid permit to the city building code.

~~(street level removed)~~

“Vacant commercial space” means any portion of a commercial space that, on or after (date of ordinance), is not occupied and has not been occupied during the preceding ninety days.

**GENERAL MINIMUM MAINTENANCE REQUIREMENTS**

All responsible persons shall perform the following with respect to each structure they own, lease, rent, or lawfully possess:

- A. Maintain all exterior surfaces, including but not limited to doors, windows, door and window frames, cornices, porches, trim, balconies, decks, and fences, in good condition.
- B. Protect exterior wood surfaces, other than decay-resistant woods, from the elements and decay with paint or other protective covering or treatment. If protection of the surface is

compromised, restore adequate protection within a reasonable time; for example, remove peeling, flaking or chipped paint **and** repaint the compromised surface.

- C. Cause all siding and masonry joints and joints between the building envelope and the perimeter of windows, doors, and skylights to be weather-resistant and watertight.
- D. Coat all metal surfaces subject to rust or corrosion, except those designed to be stabilized by oxidation, to inhibit rust and corrosion, after first stabilizing any existing rust and corrosion. Remove oxidation stains from exterior surfaces.
- E. Maintain all exterior walls free from moss, algae, dirt, grime, holes, breaks and loose or decaying materials. Weatherproof and properly coat the surface of all exterior walls when required to prevent deterioration.
- F. Maintain the roof and flashing of all structures so that they are sound, tight, free of moss, algae or defects that admit rain, attract pests or create a public nuisance. Maintain adequate roof drainage to prevent dampness and deterioration in the walls and inside the structure. Maintain roof drains, gutters, and downspouts in good repair and free from obstructions.
- G. **Maintenance of overall property, inclusive of parking spaces.**

### **VACANT COMMERCIAL SPACE REGISTRATION**

A. At least one responsible person for each vacant commercial space must register that space with the city within **10 14 consecutive** calendar days of the date the space becomes vacant commercial space, as that term is defined in section \_\_, unless:

1. The space is the subject of a current, valid building permit for repair or rehabilitation and the responsible person provides proof, such as receipts, invoices or executed contracts, that the repair or rehabilitation is proceeding without significant delay; or

2. The space meets all applicable codes and regulations that apply to a permitted nonresidential use, and the responsible person is actively attempting to sell, lease, or rent the property (which is evidenced, in part, **by appropriate signage and not over pricing the property** from the going rate in that particular area); or **\*\*\*Ask Attorney what suggestions for these might be\*\*\***

3. The property the commercial space is located on is the subject of a land use application for redevelopment for which approval has been granted but building permits have yet to be issued.

B. A space will be **considered registered** on the date the city receives, on a form provided by the building official and properly completed and signed by a responsible person, the following information:

- 1. The street address and parcel number of the vacant commercial space;
- 2. The name, address, daytime and evening telephone numbers of each responsible person for the vacant commercial space, including any owner or tenant;
- 3. The period of time the vacant commercial space is expected to remain vacant;
- 4. Any other information requested by the building official for the administration of this chapter.

**C. For every registered vacant commercial space, a responsible person must record a notice that the space is registered with the city as a vacant commercial space with the Pierce County or King County**

Auditor. The notice must be approved by the building official, and a copy of the recorded notice must be received by the city no later than thirty days from the date the space is registered. **\*\*Ask Attorney what anyone gains with this, does this really matter?\*\*\***

**To be reviewed by Legal-if not necessary, delete**

D. A responsible person must post the following notice **on a form provided by the building official** inside every vacant commercial space, **to be** clearly visible to all potential tenants, lessees, renters or buyers upon entering the space but not visible from outside the space:

1. This Vacant Commercial Space is registered with the City of Milton.
2. This Vacant Commercial Space may not meet all applicable codes and regulations, which may include codes and regulations required to occupy the space for a permitted use in the City of Milton.
3. The Vacant Commercial Space was registered on (date).

E. A responsible person must renew the registration of each vacant commercial space on or before January 1<sup>st</sup> of each year that the space remains vacant. A responsible person must submit the renewal application to the city on forms provided by the building official.

F. Upon satisfactory proof to the building official that the vacant commercial space is occupied as defined in Section \_\_, the vacant commercial space will be unregistered. Proof of physical occupation may include, but is not limited to, usable furniture, office equipment, retail inventory or other equipment and inventory in the space that are consistent with the unit's intended use, and persons regularly present at and using the space for its intended use. Proof of physical occupancy must also include documentation, which may include, but is not limited to, a current, executed lease agreement, paid utility receipts reflecting payments for six consecutive months from the month the space is occupied, or valid state and local business licenses, federal income tax or city business and occupation tax statements indication the subject space is the official business address of the person or business claiming occupancy.

G. The determination of the number of vacant commercial spaces a structure contains will be at the reasonable discretion of the building official.

**WINDOW DISPLAYS FOR COMMERCIAL SPACES ~~NOT OCCUPIED VACANT FOR THIRTY DAYS~~**

When commercial space is unoccupied for more than thirty days, a responsible person must take steps to maintain a vibrant streetscape and avoid adverse impacts on neighborhood character by applying at least one of the following measures to all ground-floor windows that face sidewalks, streets, or public open space:

- A. Paint windows with visually appealing scenes depicting or suggesting business or cultural activities;
- B. Display works of art or provide other displays of cultural or educational value, using background panels or other methods to screen views from the street of the unoccupied space;
- C. Other measures consistent with these examples approved by the building official.

**FEES (not taxes) FOR VACANT COMMERCIAL SPACE REGISTRATION**

A. At least one responsible person shall pay an annual registration fee of \$100.00 for each registered vacant commercial space. At least one responsible person must pay the fee to the city at the time the space is registered and on January 1<sup>st</sup> of each year that the space remains vacant.

B. Registration waivers may be granted if the owner provides satisfactory proof that the vacancy is temporary and may be due to illness of the owner, active military service or some other reasonable explanation believed to be short-term in nature and documentable as necessary.

C. After a vacant **commercial space/building** is placed on the registry, the city will inspect the property to ensure it is secure and safe. ~~from water damage.~~ The owner of the building will be required to pay a ~~\$40.00~~ **\$100.00** fee for the inspection. The ~~legal department~~ **Building Department** will notify the property owner of any maintenance issues, and citations will be issued if the property is not brought into compliance.

~~D. Violation of the Milton Sign Code Definition 17.50.020 Abandon Sign (a sign that has not been changed or removed within 180 days of ceasing to be relevant) and fall under 17.50.200 of the sign code Penalty for Violations which fall under MMC 9.04.040.~~

#### **\_\_\_\_\_ FEES IN LIEU of OCCUPANCY**

~~D. A. The commercial space/building must be occupied for 11 consecutive months for it to be taken off the vacant commercial space/building registry.~~ The city will require the property owner to pay a **vacancy** fee if his or her building has been on the registry for one year.

~~E. Vacant commercial space/buildings must be registered with the City of Milton that have been 100% vacant for 30 days or more.~~

~~F. B.~~ Failure to comply; a notification from the City of Milton will be sent to the business owner. If they still do not comply, the city will register the building for him or her and will levy a fine of at least \$100.00.

~~G. C.~~ The purpose of this is to keep unoccupied buildings in a safe, well-maintained condition and prevent them from becoming a safety hazard and lowering values of surrounding properties.

~~H. D.~~ The fee will be based on the duration of the vacancy as determined by the following scale:

~~(Option 1)~~

~~1.E.~~ The fee will be based on the **vacant space/building's** square footage at \$.40 per square foot. ~~in the City of Milton \$.20 per square foot in all other areas.~~ This fee will increase by \$.10 per square incrementally each year.

~~(Example: Hometown Hardware has 21,058 sq. ft on the interior and 1,000 sq. ft on the exterior. Total sq. ft is 22,058, leasing at \$13.00 per sq. ft is \$286,754.00 per month with a 10 year lease. The fee charged would be \$8,823.20 per month with an annual fee of \$105,878.00.~~

~~2. F. Fees will be billed annually. The legal department city will file lawsuits against those who do not pay the fee and place liens on their property.~~

~~3. G. Violation of the Milton Sign Code Definition 17.50.020 Abandon Sign (a sign that has not been changed or removed within 180 days of ceasing to be relevant) and fall under 17.50.200 of the sign code Penalty for Violations which fall under MMC 9.04.040.~~

~~(Option 2)~~

~~1. Two hundred fifty dollars for each space vacant for less than one year;~~

~~2. Five hundred dollars for each space vacant for at least one year but less than two years;~~

~~3. Seven hundred dollars for each space vacant for at least two years but less than three years;~~

~~4. One thousand dollars for each space vacant for at least three years and for each year thereafter until the building is occupied.~~

#### DELINQUENT REGISTRATION FEES-COLLECTION

If a responsible person fails to pay the registration fee by the due date, the city is authorized to take action to collect the registration fee, including filing civil actions or turning the matter over to collection, in which case costs incurred by the city as a result of the collection process will be assessed to the responsible person or responsible persons in addition to the registration fee. **\*\*Is it a necessity to notify prior to enforcement?\*\*-Ask Attorney**

#### DUTY TO AMEND REGISTRATION STATEMENT

Responsible persons for any registered vacant commercial space shall advise the building official, in writing, of any changes to the information on the registration form within thirty days of the occurrence of the change.

#### INSPECTIONS

The building official (and his designee), or code enforcement officers, or both are authorized to conduct inspections to enforce the provisions of this chapter.

#### ENFORCEMENT

A. Enforcement of the provisions of this chapter will be performed in accordance \_\_\_\_\_

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B. No responsible person may violate or fail to comply with any provisions of this chapter. Each responsible person commits a separate offense for each day they commit, continue or permit a violation of any provision of this chapter.

C. All responsible persons for a commercial space are jointly and severally responsible with respect to that commercial space for compliance with the provisions of this chapter and for any payments that they may be required to make to the city under this chapter. If the commercial space is subject to a lease, the city shall have discretion to determine whether to enforce this chapter against the commercial space owner, the tenant or both. The city shall consider in this determination whether the lease provides that the compliance with this chapter is the responsibility of the commercial space owner or the tenant.

#### ANNUAL REPORT

The building official shall make a report to the city council in January of every odd year on the status of the vacant commercial space registration program.

#### References:

Huntington, West Virginia

Weeping Water, Nebraska

Everett, WA

Tucson, AZ

Drafted by: Jim Gillespie

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# Trisha Summers

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**From:** Trisha Summers  
**Sent:** Wednesday, May 29, 2019 2:22 PM  
**To:** Planning Commission  
**Cc:** Shanna Styron-Sherrell  
**Subject:** Vacant Building Ordinance  
**Attachments:** Vacant Building Ordinance - DPK response (1946222x7ACF2).docx

Please see the email below that I received from our Attorney. Do not respond ALL to this email. Hopefully this will get you to the finish line!

Trisha Summers  
City Clerk

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**From:** Daniel P. Kenny <dpkenny@omwlaw.com>  
**Sent:** Wednesday, May 29, 2019 2:09 PM  
**To:** Trisha Summers <tsummers@cityofmilton.net>  
**Subject:** FW: Planning Commission Ordinance Review

Trisha,  
Attached is a revised ordinance that include a number of comment boxes with comments and questions.

I think my main first point is that I've noticed that the planning commission tends to start their tasks, whether it is parking regulations or vacant buildings, with some other code they find. In this case, it was a compilation of 4 codes – 3 of which were from out of state. Then, the commission revises or adds to that code. Finding the right code to start with is important for many reasons. First, it is important to understand the context of the selected code and what they were trying to accomplish along with other code provisions. The goals of the specific city can, and often do, lead to different types of codes. Second, some codes are crafted around a structure that has not been challenged or is in the minority. Here, Everett has a code that I am not aware has been challenged. Further, most cities use nuisance law as the mechanism to accomplish these goals. So, they are doing it differently. Finally, I would only ever look to Washington state municipal codes because state law differs.

I would like to offer to be a resource to help find a starting place for code revisions in the future. I might be able to point the PC towards a code that is generally known to be legally defensible and workable. This will help set the project out on the right foot.

Next, as I express in my comments in the document, I am generally fine with a registration fee that is directly tied to the costs of the program (which would not be very high), but if the fee goes beyond that, it could be viewed as a tax and may not be allowed. You'd need lots of support to accomplish something like that.

Further, the typical way to deal with these types of properties is to utilize or create nuisance laws that will keep the properties in check. Registrations, fees, and mandatory maintenance – beyond that which is necessary for life and safety – feels like an invitation to challenge the ordinance.

I'd be happy to review this again after the planning commission reviews and updates as they see fit.

Daniel P. Kenny | Attorney

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Seattle, WA 98164  
phone: 206.447.2258 | fax: 206.926.2861 | email: [dpkenny@omwlaw.com](mailto:dpkenny@omwlaw.com)  
[www.omwlaw.com](http://www.omwlaw.com)

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**From:** Trisha Summers <[tsummers@cityofmilton.net](mailto:tsummers@cityofmilton.net)>  
**Sent:** Thursday, May 16, 2019 9:14 AM  
**To:** Daniel P. Kenny <[dpkenny@omwlaw.com](mailto:dpkenny@omwlaw.com)>  
**Subject:** Planning Commission Ordinance Review

The Planning Commission is working on a Vacant Building Ordinance that they have modeled after four cities around the US and one of them being Everett, WA. They have been working on this for about 3 meetings and feel that they are at a place where they need some attorney input. I highlighted the questions they had for you on the attached document. The next meeting is June 12<sup>th</sup> so I am hoping we can get some of these things answered for them by the 5<sup>th</sup> of June so I can get their packets out to them the week before. Thank you so much! Feel free to weigh in on other areas I didn't highlight if you have comments on anything else.

Trisha Summers  
City of Milton

Ordinance: Register/Establish Fees for Vacant Buildings in ~~Up-Town and Business District~~ the city of Milton, Washington

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

AN **ORDINANCE** OF THE CITY OF MILTON, WASHINGTON, TO CREATE A POLICY TO IDENTIFY AND REGISTER VACANT BUILDINGS; TO ESTABLISH A PROCESS TO IMPROVE COMMUNITY SAFETY AND PROMOTE THE WELL BEING OF AREA BUSINESS; TO REPEAL ANY ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO DECLARE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MILTON, WASHINGTON:

\_\_\_\_ **PURPOSE**

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“Occupied” means a **permitted, nonresidential use that is physically located and lawfully operating in a commercial space for at least six consecutive months.**

**Should we keep only the terms that we use in code in this ordinance?**

**Commented [DPK1]:** <http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Nuisances-Regulation-and-Abatement/Building-Nuisances.aspx>

Most often situations like this are dealt with using nuisance regulations of varying types. The only one with regulations like this that I am aware of is Everett. As a result I do not know if this would withstand legal challenge. A well developed nuisance regulation is much more common and focuses on ensuring safety and security, rather than forcing payment and registration.

“Owner” means the person, persons, or entity shown to be the owner of record on the records of the Pierce County or King County Register of Deeds, those identified as the owner or owners on a vacant building registration form, holder of an unrecorded contract for deed, a mortgage or vendor in possession, assignee of rents, receiver, executor, trustee, lessee, other person, firm or corporation in control of the freehold of the premises or lessor state therein. Any such person, person’s or entity, shall have a joint and several obligations for compliance with the provisions of this article.

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“Secured by other than normal means” means a building secured by means other than those used in the design of the building.

~~“Unoccupied” means a building which is not being used for a legal occupancy. The storage of products and materials does not constitute occupancy unless authorized by the zoning ordinance of the city. **\*\*Attorney, please review definition\*\***~~

**Commented [DPK2]:** You define Occupied. Do you also need unoccupied?

~~(Still in question and request this to be looked at by city attorney)~~

“Unsecured” means a building or portion of the building that is open to entry by unauthorized persons without the use of tools.

“Vacant commercial building” means a building structure or portion of a building structure that is:

- (1) Unoccupied and secured;
- (2) Unoccupied and unsecured;
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- (4) Unoccupied and a dangerous structure;
- (5) Unoccupied and condemned;
- (6) Unoccupied and has city code violations; or
- (7) Condemned and illegally occupied.

**Commented [DPK3]:** Why would these structures be an issue?

VACANT COMMERCIAL BUILDING does not mean any structure being constructed pursuant to a valid permit to the city building code.

~~(street level removed)~~

“Vacant commercial space” means any portion of a commercial space that, on or after (date of ordinance), is not occupied and has not been occupied during the preceding ninety days.

**Commented [DPK4]:** Couldn't you just use nuisance provisions for these?

#### **GENERAL MINIMUM MAINTENANCE REQUIREMENTS**

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**Commented [DPK5]:** This section matches 16.16.040 from Everett.

compromised, restore adequate protection within a reasonable time; for example, remove peeling, flaking or chipped paint and repaint the compromised surface.

- C. Cause all siding and masonry joints and joints between the building envelope and the perimeter of windows, doors, and skylights to be weather-resistant and watertight.
- D. Coat all metal surfaces subject to rust or corrosion, except those designed to be stabilized by oxidation, to inhibit rust and corrosion, after first stabilizing any existing rust and corrosion. Remove oxidation stains from exterior surfaces.
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- G. Maintenance of overall property, inclusive of parking spaces.

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2. The space meets all applicable codes and regulations that apply to a permitted nonresidential use, and the responsible person is actively attempting to sell, lease, or rent the property (which is evidenced, in part, by appropriate signage and not over pricing the property from the going rate in that particular area); or \*\*\*Ask Attorney what suggestions for these might be\*\*\*

3. The property the commercial space is located on is the subject of a land use application for redevelopment for which approval has been granted but building permits have yet to be issued.

B. A space will be considered registered on the date the city receives, on a form provided by the building official and properly completed and signed by a responsible person, the following information:

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- 4. Any other information requested by the building official for the administration of this chapter.

C. For every registered vacant commercial space, a responsible person must record a notice that the space is registered with the city as a vacant commercial space with the Pierce County or King County

**Commented [DPK6]:** This seems to be overly broad and vague. The above sections specifically call out maintenance of certain things, then this just says everything.

I would remove this and rely on the specific requirements.

**Commented [DPK7]:** This will be the definitions section above in this chapter.

**Commented [DPK8]:** This seems to get too far into the business practices of the seller.

What about appropriate signage and an active listing in a real estate database?

This might be the MLS, or another database of real estate listings.

Auditor. The notice must be approved by the building official, and a copy of the recorded notice must be received by the city no later than thirty days from the date the space is registered. **\*\*Ask Attorney what anyone gains with this, does this really matter?\***

**To be reviewed by Legal if not necessary, delete**

**CD.** A responsible person must post the following a notice with the information identified below on a form provided by the building official inside every vacant commercial space, to be clearly visible to all potential tenants, lessees, renters or buyers upon entering the space but not visible from outside the space:

1. This Vacant Commercial Space is registered with the City of Milton.

~~2. This Vacant Commercial Space may not meet all applicable codes and regulations, which may include codes and regulations required to occupy the space for a permitted use in the City of Milton.~~

~~3. The Vacant Commercial Space was registered on (date).~~

**DE.** A responsible person must renew the registration of each vacant commercial space on or before January 1<sup>st</sup> of each year that the space remains vacant. A responsible person must submit the renewal application to the city on forms provided by the building official.

**EF.** Upon satisfactory proof to the building official that the vacant commercial space is occupied as defined in Section \_\_, the vacant commercial space will be unregistered. Proof of physical occupation may include, but is not limited to, usable furniture, office equipment, retail inventory or other equipment and inventory in the space that are consistent with the unit's intended use, and persons regularly present at and using the space for its intended use. Proof of physical occupancy must also include documentation, which may include evidences, but is not limited to, a current, executed lease agreement, paid utility receipts reflecting payments for six consecutive months from the month the space is occupied, or valid state and local business licenses, federal income tax or city business and occupation tax statements indication the subject space is the official business address of the person or business claiming occupancy.

**FG.** The determination of the number of vacant commercial spaces a structure contains will be at the reasonable discretion of the building official.

#### **\_\_\_ WINDOW DISPLAYS FOR COMMERCIAL SPACES NOT OCCUPIED VACANT FOR THIRTY DAYS**

When commercial space is unoccupied for more than thirty days, a responsible person must take steps to maintain a vibrant streetscape and avoid adverse impacts on neighborhood character by applying at least one of the following measures to all ground-floor windows that face sidewalks, streets, or public open space:

- A. Paint windows with visually appealing scenes depicting or suggesting business or cultural activities;
- B. Display works of art or provide other displays of cultural or educational value, using background panels or other methods to screen views from the street of the unoccupied space;
- C. Other measures consistent with these examples approved by the building official.

#### **\_\_\_ FEES (not taxes) FOR VACANT COMMERCIAL SPACE REGISTRATION**

**Commented [DPK9]:** Agreed. I do not see utility in recording this type of notice with the auditor. I would not include this provision.

**Commented [DPK10]:** Wat is the purpose of this?

I would worry that this will be required to be on the notice and may be a deterrent to a potential purchaser. Places doubt about the property.

A seller may then make a claim that the required notice deflated the purchase price or scared away purchasers altogether. I would avoid this and delete this section.

**Commented [DPK11]:** Not sure the City would want, or has the right to, the details of private commercial leases. The terms may be confidential.

**Commented [DPK12]:** I would remove.

A. At least one responsible person shall pay an annual registration fee of \$100.00 for each registered vacant commercial space. At least one responsible person must pay the fee to the city at the time the space is registered and on January 1<sup>st</sup> of each year that the space remains vacant.

**Commented [DPK13]:** I would recommend not citing the amount here, but instead reference a fee resolution where this can be added.

This would allow the fee to be changed in the fee resolution without a code amendment.

B. Registration waivers may be granted if the owner provides satisfactory proof that the vacancy is temporary and may be due to illness of the owner, active military service or some other reasonable explanation believed to be short-term in nature and documentable as necessary.

C. After a vacant commercial space/building is placed on the registry, the city will inspect the property to ensure it is secure and safe. ~~from water damage.~~ The owner of the building will be required to pay a \$40.00 \$100.00 fee for the inspection. The ~~legal department~~ Building Department will notify the property owner of any maintenance issues, and citations will be issued if the property is not brought into compliance.

**Commented [DPK14]:** Same comment as above. Consider putting this in the fee resolution.

~~D. Violation of the Milton Sign Code Definition 17.50.020 Abandon Sign (a sign that has not been changed or removed within 180 days of ceasing to be relevant) and fall under 17.50.200 of the sign code Penalty for Violations which fall under MMC 9.04.040.~~

**Commented [DPK15]:** The sign code is already in place to deal with abandoned signs. No need to include here.

~~D. The fees are intended to defray the costs of administering this chapter and may be changed by resolution of the council to meet these costs.~~

#### ~~FEES IN LIEU of OCCUPANCY~~

**Commented [DPK16]:** This no longer is a fee reasonably related to the program, as such, it could be viewed as a tax.

I would not recommend including this.

As you'll notice, in Everett, there is an increased annual registration fee for each year a building is unoccupied, but they specifically state in 16.16.070(B) that the fees are intended to defray costs of the administering the section. So, they are tying the fee to the regulation.

What you're doing here goes beyond that.

~~D. A. The commercial space/building must be occupied for 11 consecutive months for it to be taken off the vacant commercial space/building registry. The city will require the property owner to pay a vacancy fee if his or her building has been on the registry for one year.~~

~~E. Vacant commercial space/buildings must be registered with the City of Milton that have been 100% vacant for 30 days or more.~~

~~F. B. Failure to comply; a notification from the City of Milton will be sent to the business owner. If they still do not comply, the city will register the building for him or her and will levy a fine of at least \$100.00.~~

~~G. C. The purpose of this is to keep unoccupied buildings in a safe, well-maintained condition and prevent them from becoming a safety hazard and lowering values of surrounding properties.~~

~~H. D. The fee will be based on the duration of the vacancy as determined by the following scale:~~

~~{Option 1}~~

~~1.E. The fee will be based on the vacant space/building's square footage at \$.40 per square foot. in the City of Milton \$.20 per square foot in all other areas. This fee will increase by \$.10 per square incrementally each year.~~

~~(Example: Hometown Hardware has 21,058 sq. ft on the interior and 1,000 sq. ft on the exterior. Total sq. ft is 22,058, leasing at \$13.00 per sq. ft is \$286,754.00 per month with a 10 year lease. The fee charged would be \$8,823.20 per month with an annual fee of \$105,878.00.~~

~~2- F. Fees will be billed annually. The legal department city will file lawsuits against those who do not pay the fee and place liens on their property.~~

~~3- G. Violation of the Milton Sign Code Definition 17.50.020 Abandon Sign (a sign that has not been changed or removed within 180 days of ceasing to be relevant) and fall under 17.50.200 of the sign code Penalty for Violations which fall under MMC 9.04.040.~~

~~(Option 2)~~

- ~~1- Two hundred fifty dollars for each space vacant for less than one year;~~
- ~~2- Five hundred dollars for each space vacant for at least one year but less than two years;~~
- ~~3- Seven hundred dollars for each space vacant for at least two years but less than three years;~~
- ~~4- One thousand dollars for each space vacant for at least three years and for each year thereafter until the building is occupied.~~

#### DELINQUENT REGISTRATION FEES-COLLECTION

If a responsible person fails to pay the registration fee within 30 days following by the due date and after being notified by the City of such failure to pay the registration fee, the city is authorized to take action to collect the registration fee, including filing civil actions or turning the matter over to collection, in which case costs incurred by the city as a result of the collection process will be assessed to the responsible person or responsible persons in addition to the registration fee. **\*\*Is it a necessity to notify prior to enforcement?\*\*-Ask Attorney**

**Commented [DPK17]:** I would always recommend notice.

Presumably, the registration informed them of the need to pay the annual fee. The City could also reach out at the anniversary to collect the fee, then if no action is taken, the City could move forward.

#### DUTY TO AMEND REGISTRATION STATEMENT

Responsible persons for any registered vacant commercial space shall advise the building official, in writing, of any changes to the information on the registration form within thirty days of the occurrence of the change.

#### INSPECTIONS

The building official (and his designee), or code enforcement officers, or both are authorized to conduct inspections consistent with the law to enforce the provisions of this chapter.

#### ENFORCEMENT

A. Enforcement of the provisions of this chapter will be performed in accordance \_\_\_\_\_

B. No responsible person may violate or fail to comply with any provisions of this chapter. Each responsible person commits a separate offense for each day they commit, continue or permit a violation of any provision of this chapter.

**Commented [DPK18]:** This will add up quick...

C. All responsible persons for a commercial space are jointly and severally responsible with respect to that commercial space for compliance with the provisions of this chapter and for any payments that they may be required to be made to the city under this chapter. If the commercial space is subject to a lease, the city shall have discretion to determine whether to enforce this chapter against the commercial space owner, the tenant or both. The city shall consider in this determination whether the lease provides that the compliance with this chapter is the responsibility of the commercial space owner or the tenant.

#### ANNUAL REPORT

The building official shall make a report to the city council in January of every odd year on the status of the vacant commercial space registration program.

#### References:

Huntington, West Virginia

Weeping Water, Nebraska

Everett, WA

Tucson, AZ

**Commented [DPK19]:** I would always use Washington state codes as reference. Washington law is not the same as other states and we do not want to get caught up in something that is unsupported by Washington law.

Drafted by: Jim Gillespie

If useful, request sample codes from me as a starting place.

Further, picking a sample code to work from will take some thought and consideration as the city may have different circumstances, the code may be erroneous for some reason, etc.

The majority of this code appears to be from Everett. I am not aware of what process they went through to get to this code. I am also not aware whether this code has withstood legal challenge. I am concerned that this forces payment for non-use of a structure beyond ensuring safety and security of the structure. This feels like overreach, but I do not have a case to point to on this topic.