

ORDINANCE NO: 10 -10

AN ORDINANCE OF THE BOROUGH OF KEYPORT IN  
MONMOUTH COUNTY, CREATING CHAPTER 12-17 OF THE  
REVISED GENERAL ORDINANCES OF THE BOROUGH OF  
KEYPORT WITH REGARD TO ABANDONED PROPERTY

WHEREAS, pursuant to *N.J.S.A. 40:48-1 et seq.*, the power to adopt public ordinances for public health, safety and welfare of the Borough of Keyport (the “Borough”) is conterminous with the power of the legislature; and

WHEREAS, pursuant to *N.J.S.A. 55:19-78 et seq.*, the Borough is authorized to implement ordinances with regard to abandoned properties and their rehabilitation; and

WHEREAS, this ordinance establishes and adopts *N.J.S.A. 55:19-78 et seq.*; and

WHEREAS, this ordinance modifies the New Jersey statutes only for purposes of order and context. All substantive rights and obligations are preserved.

NOW THEREFORE, BE IT ENACTED by the Mayor and Council of the Borough of Keyport wish to add Chapter 12-17 of the Revised General Ordinances of the Borough with regard to abandoned properties and their rehabilitation as follows:

NEW SECTION

12-17 ABANDONED PROPERTIES; REHABILITATION

12-17.1 Findings and declarations.

A. Abandoned properties create a wide range of problems for the Borough, fostering criminal activity, creating public health problems and otherwise diminishing the quality of life for residents and business operators in those areas.

B. Abandoned properties diminish the property values of neighboring properties and have a negative effect on the quality of life of adjacent property owners, increasing the risk of property damage through arson and vandalism and discouraging neighborhood stability and revitalization.

C. For these reasons, abandoned properties are presumptively considered to be nuisances, in view of their negative effects on nearby properties and the residents or users of those properties.

D. The continued presence of abandoned properties in the Borough acts as a significant barrier to the Borough's continued progressive development and revitalization.

E. The responsibility of a property owner to maintain a property in sound condition and prevent it from becoming a nuisance to others extends to properties which are not in use and "demolition by neglect," leading to the deterioration and loss of the property, or failure by an owner to comply with legitimate orders to demolish, stabilize or otherwise repair his or her property creates a presumption that the owner has abandoned the property.

#### 12-17.2 Definitions.

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

ABANDONED PROPERTY - Any property that is determined to be abandoned pursuant to *N.J.S.A. 55:19-78 et al.*

DEPARTMENT - The New Jersey Department of Community Affairs.

INTERESTED PARTY – Shall include any resident of the Borough, any owner or operator of a business within the Borough, or any organization representing the interests of residents or engaged in furthering the revitalization and improvement of the neighborhood in which the property is located.

LIENHOLDER or MORTGAGE HOLDER - Any person or entity holding a note, mortgage or other interest secured by the building or any part thereof.

OWNER - The holder or holders of title to an abandoned property.

PROPERTY - Any building or structure and the land appurtenant thereto.

PUBLIC OFFICER - Shall mean the Construction Code Official unless another person is designated by the Mayor and Borough Council to carry out the responsibilities set forth in *N.J.S.A. 55:19-78 et al.*

QUALIFIED REHABILITATION ENTITY - An entity organized or authorized to do business under the applicable New Jersey statutes, which shall have as one of its purposes the construction or rehabilitation of residential or nonresidential buildings, the provision of affordable housing, the restoration of abandoned property, the revitalization and improvement of urban neighborhoods, or similar purpose, and which shall be well qualified by virtue of its staff, professional consultants, financial resources, and prior activities set forth in *N.J.S.A. 55:19-78 et al.* to carry out the rehabilitation of abandoned buildings in the Borough.

#### 12-17.3 Inventory of abandoned property.

A. The Public Officer shall establish and maintain a list of abandoned property, to be known as the "abandoned property list." The Borough may add properties to the abandoned property list at any time and may delete properties at any time when the Public Officer finds that the property no longer meets the definition of an abandoned property. An interested party may request that a property be included on the abandoned property list.

B. An abandoned property shall not be included on the abandoned property list if rehabilitation is being performed in a timely manner, as evidenced by building permits issued and diligent pursuit of rehabilitation work authorized by those permits. A property on which an entity other than the Borough has purchased or taken assignment from the Borough of a tax sale certificate which has been placed on the abandoned property list may be removed in accordance with *N.J.S.A. 55:19-103*.

C. The Public Officer shall establish the abandoned property list or any additions thereto by publication in the official newspaper of the Borough, which publication shall constitute public notice, and, within 10 days after publication, shall send a notice by certified mail, return receipt requested, and by regular mail to the owner of record of every property included on the list. The published and mailed notices shall identify property determined to be abandoned, setting forth the owner of record, if known, the tax lot and block number and street address. The Public Officer, in consultation with the Tax Collector, shall also send out a notice by regular mail to any mortgagee, servicing organization, or property tax processing organization that receives a duplicate copy of the tax bill. When the owner of record is not known for a particular property and cannot be ascertained by the exercise of reasonable diligence by the Tax Collector, notice shall not be mailed but instead shall be posted on the property. The mailed notice shall indicate the factual basis for the Public Officer's finding that the property is abandoned property and specifying the information relied upon in making such finding. In all cases, a copy of the mailed or posted notice shall also be filed by the Public Officer in the Monmouth County Clerk's Office. The notice shall be indexed by the name of the property owner as defendant and the Borough as plaintiff, as though an action had been commenced by the Borough against the owner.

D. An owner or lienholder may challenge the inclusion of his property on the abandoned property list determined pursuant to subsection B of this section by appealing that determination to the Public Officer within 30 days of the owner's receipt of the certified notice or 40 days from the date upon which the notice was sent. An owner whose identity was not known to the Public Officer shall have 40 days from the date upon which notice was published or posted, whichever is later, to challenge the inclusion of a property on the abandoned property list. For good cause shown, the Public Officer shall accept a late filing of an appeal. Within 30 days of receipt of a request for an appeal of the findings contained in the notice, the Public Officer shall schedule a hearing for redetermination of the matter. Any property included on the list shall be presumed to be abandoned property unless the owner, through the submission of an affidavit or certification by the property owner certifying that the property is not abandoned and stating the reasons for same, can demonstrate that the property was

erroneously included on the list. The affidavit or certification shall be accompanied by supporting documentation including, but not limited to, photographs, and repair invoices, bills and construction contracts. The Public Officer shall decide any timely filed appeal within 10 days of the hearing on the appeal and shall promptly, by certified mail, return receipt requested, and by regular mail, notify the property owner of the decision and the reasons therefor.

E. The property owner may challenge an adverse determination of an appeal with the Public Officer, by instituting a summary proceeding in the Superior Court, Law Division, Monmouth County within 20 days of the date of the notice of decision mailed by the Public Officer. The Public Officer shall promptly remove any property from the abandoned property list that has been determined not to be abandoned on appeal.

F. The abandoned property list shall become effective, and the Borough shall have the right to pursue any legal remedy with respect to properties on the abandoned property list at such time as any one property has been placed on the list in accordance with the provisions of this section, upon the expiration of the period for appeal with respect to that property or upon the denial of an appeal brought by the property owner.

#### 12-17.4 Sale of tax lien.

A. Notwithstanding *N.J.S.A.* 54:5-19 or the provisions of any other law to the contrary, if a property is included on the abandoned property list and the property taxes or other Borough liens due on the property are delinquent six or more quarters as of the date of expiration of the right to appeal inclusion on the list, or, if an appeal has been filed, as of the date that all opportunities for appeal of inclusion on the list have been exhausted, then the tax lien on the property may be sold in accordance with the procedures in the "Tax Sale Law," *N.J.S.A.* 54:5-1 et seq., on or after the 90th day following the expiration of that time of appeal or final determination on an appeal, as appropriate. The Borough may, at its option, require that the sale of the tax sale certificate or any subsequent assignment or transfer of a tax sale certificate held by the Borough be subject to the express condition that the purchaser or assignee shall be obliged to perform and conclude any rehabilitation or repairs necessary to remove the property from the abandoned property list and to post a bond in favor of the Borough to guarantee the rehabilitation or repair of the property. The Public Officer may waive the requirement of a bond. The cost of rehabilitation and repairs and the cost of the bond shall be added to the amount required to be paid by the owner for redemption of the property. The purchaser, assignee or transferee of the tax sale certificate who is required to rehabilitate and repair the property shall be required to file the appropriate affidavits with the Tax Collector representing the amounts of monies expended periodically toward the rehabilitation or repair of the property. The tax sale certificate purchaser, assignee or transferee, under the auspices and with the authority of the Borough, shall be permitted to enter in and upon the property for the purposes of appraising the costs of rehabilitation and repair and to perform all other acts required to guarantee the completion of the rehabilitation or repair of the property. No rehabilitation or repair work shall be commenced, however, until proof of adequate liability insurance and an indemnification agreement holding the

Borough harmless is filed with the Public Officer. If the tax sale certificate is not purchased at the initial auction of the tax sale certificate and the Borough purchases the certificate, then the Borough is authorized and empowered to receive all of the right, title and interest in that certificate.

*B. Remediation.*

(1) If the Borough acquires the tax sale certificate for a property on the abandoned property list, then, upon 10 days' written notice to the property owner and any mortgagee as of the date of the filing of the *lis pendens* notice pursuant to *N.J.S.A.* 55:19-55, the Borough shall be permitted to enter upon the property and remediate any conditions that caused the property to be included on the abandoned property list. No remediation shall be commenced, however, if within that ten-day period the owner or mortgagee shall have notified the Public Officer, in writing, that the owner or mortgagee has elected to perform the remediation itself. When the owner or mortgagee elects to perform the remediation itself, it shall be required to post bond in favor of the Borough in order to ensure performance. The amount and conditions of the bond shall be determined by the Public Officer.

(2) The certified cost of remediation incurred by the Borough shall constitute a lien upon the property first in time and right to any other lien, whether the other lien was filed prior to or after the filing of any lien by the Borough, except for Borough taxes, liens and assessments, together with any interest thereon. The certification of costs shall be filed and recorded as a lien by the Borough with the Monmouth County Clerk's Office.

*C. Failure to remediate.*

(1) Failure of an owner or lienholder to remove a property from the abandoned property list within the period of time for appeal of inclusion of the property shall be prima facie evidence of the intent of the owner to continue to maintain the property as abandoned property.

(2) The clearance, development, redevelopment, or repair of property being maintained as an abandoned property pursuant to Subsection C(1) of this section shall be a public purpose and public use for which the power of eminent domain may be exercised.

**12-17.5 Removal from list prior to tax sale.**

A. An owner or lienholder may remove a property from the list of abandoned properties prior to sale of the tax sale certificate by paying all taxes and Borough liens due, including interest and penalties, and:

(1) By posting cash or a bond equal to the cost of remediating all conditions because of which the property has been determined to be abandoned and posting cash or a bond to cover the cost of any environmental cleanup required on the property, evidenced by a certification by a licensed engineer

retained by the owner and reviewed and approved by the Public Officer stating that the cash or bond adequately covers the cost of the cleanup; or

(2) By demonstrating to the satisfaction of the Public Officer that the conditions rendering the property abandoned have been remediated in full; provided, however, that where the Public Officer finds that the owner is actively engaged in remediating the conditions because of which the property was determined to be abandoned, as evidenced by significant rehabilitation activity on the property, the Public Officer may grant an extension of time of not more than 120 days for the owner to complete all work, during which time no further proceedings will be taken against the owner or the property.

B. If the owner has posted cash or a bond in order to have a property removed from the abandoned property list and the conditions because of which the property was determined to be abandoned have not been fully remediated within one year of the date of posting the cash or bond, or, in the case of a property which requires a remediation of any known, suspected or threatened release of contaminants, if the owner has failed to enter into a memorandum of agreement with the Department of Environmental Protection or an administrative consent order, as the case may be, or if an agreement or order is in effect but the owner has failed to perform the remediation in conformance with the agreement or order, then the cash or bond shall be forfeited to the Borough, which shall use the cash or bond and any interest which has accrued thereon for the purpose of demolishing or rehabilitating the property or performing the environmental remediation. Any funds remaining after the property has been demolished, rehabilitated or cleaned up shall be returned to the owner.

#### 12-17.6 Action to foreclose right of redemption.

A. When anyone other than the Borough acquires a tax sale certificate for a property on the abandoned property list at tax sale, the purchaser may institute an action to foreclose the right of redemption at any time after the expiration of six months following the date of the sale of the tax sale certificate.

B. When the Borough is the purchaser at tax sale of any property on the abandoned property list, an action to foreclose the right of redemption may be instituted in accordance with the provisions of *N.J.S.A. 54:5-77*.

C. After the foreclosure action is instituted, the right to redeem shall exist and continue to exist until barred by the judgment of the Superior Court; provided, however, that no redemption shall be permitted except where the owner:

(1) Posts cash or a bond equal to the cost of remediating the conditions because of which the property was determined to be abandoned, as determined by the court; or

(2) Demonstrates to the court that the conditions because of which the property was determined to be abandoned have been remedied in full.

#### **12-17.7 Final Judgment.**

Once a final judgment barring the right of redemption with respect to a property on the list of abandoned properties has been recorded, no court shall reopen such judgment at any time except on the grounds of lack of jurisdiction or fraud in the conduct of the action.

#### **12-17.8 Abandoned Property; criteria.**

A. Any property that has not been legally occupied for a period of six months and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the Public Officer that:

(1) The property is in need of rehabilitation in the reasonable judgment of the Public Officer, and no rehabilitation has taken place during that six-month period;

(2) Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least six months as of the date of a determination by the Public Officer pursuant to this section;

(3) At least one installment of property tax remains unpaid and delinquent on that property as of the date of a determination by the Public Officer pursuant to this section; or

(4) The property has been determined to be a nuisance by the Public Officer pursuant to Section 12-17.9 of this Ordinance.

B. A property which contains both residential and nonresidential space may be considered abandoned pursuant so long as 2/3 or more of the total net square footage of the building was previously legally occupied as residential space and none of the residential space has been legally occupied for at least six months at the time of the determination of abandonment by the Public Officer and the property meets the criteria of either subsections A(1) through A(4) of this section.

#### **12-17.9 Nuisance Property; criteria.**

A. A property may be determined to be a nuisance by the Public Officer if:

(1) The property has been found to be unfit for human habitation, occupancy or use;

(2) The condition and vacancy of the property materially increases the risk of fire to the property and adjacent properties;

- (3) The property is subject to unauthorized entry leading to potential health and safety hazards; the owner has failed to take reasonable and necessary measures to secure the property; or the Borough has secured the property in order to prevent such hazards after the owner has failed to do so;
- (4) The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds have created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards; or
- (5) The dilapidated appearance or other condition of the property materially affects the welfare, including the economic welfare, of the residents of the area in close proximity to the property, and the owner has failed to take reasonable and necessary measures to remedy the conditions.

B. A Public Officer who determines a property to be a nuisance pursuant to Subsections A(1) through A(5) of this section shall follow the notification procedures set forth in *N.J.S.A. 40:48-2.3 et seq.* with regard to unfit buildings.

#### **12-17.10 Property deemed not abandoned; criteria; certification of abandonment provided upon request.**

A. If an entity other than the Borough has purchased or taken assignment from the Borough of a tax sale certificate on a property that has not been legally occupied for a period of six months, that property shall not be placed on the abandoned property list if: 1) the owner of the certificate has continued to pay all Borough taxes and liens on the property in the tax year when due; and 2) the owner of the certificate takes action to initiate foreclosure proceedings within six months after the property is eligible for foreclosure and diligently pursues foreclosure proceedings in a timely fashion thereafter.

B. A property which is used on a seasonal basis shall be deemed to be abandoned only if the property meets any two of the additional criteria set forth in *N.J.S.A. 55:19-81*.

C. A determination that a property is abandoned property shall not constitute a finding that the use of the property has been abandoned for purposes of municipal zoning or land use regulation.

D. Upon the request of a purchaser or assignee of a tax sale certificate seeking to bar the right of redemption on an abandoned property, the Public Officer or the Tax Collector shall, in a timely fashion, provide the requester with a certification that the property fulfills the definition of abandoned.

#### **12-17.11 Transfer of possession and control of abandoned property.**

A. A summary action or otherwise to transfer possession and control of abandoned property in need of rehabilitation, pursuant to *N.J.S.A. 55:19-84*, to the Borough may be brought by the Borough in the Superior Court, Monmouth County, Law Division. If the court shall find that the property is abandoned and the owner or party in interest has failed to submit and initiate a rehabilitation plan,

then the court may authorize the Borough to take possession and control of the property and develop a rehabilitation plan.

B. The Borough may commence and maintain those further proceedings for the conservation, protection or disposal of the property or any part thereof that are required to rehabilitate the property, necessary to recoup the cost and expenses of rehabilitation and for the sale of the property.

C. Failure by the owner, mortgage holder or lienholder to submit plans for rehabilitation to the Borough, obtain appropriate construction permits for rehabilitation or, in the alternative, submit formal applications for funding the cost of rehabilitation to local, state or federal agencies providing such funding within that six-month period shall be deemed prima facie evidence that the owner has failed to take any action to further the rehabilitation of the property.

#### **12-17.12 Filing of complaint; required information.**

A complaint filed pursuant to *N.J.S.A. 55:19-84* shall include:

A. Documentation that the property is on the municipal abandoned property list or a certification by the Public Officer that the property is abandoned; and

B. A statement by an individual holding appropriate professional qualifications that there are sound reasons that the building should be rehabilitated rather than demolished based upon the physical, aesthetic or historical character of the building or the relationship of the building to other buildings and lands within its immediate vicinity.

#### **12-17.13 Filing of complaint; notice requirements; entry to secure, stabilize, repair or inspect the property.**

A. Within 10 days of filing a complaint, the plaintiff shall file a notice of *lis pendens* with the Middlesex County Clerk's Office.

B. At least 30 days before filing the complaint, the Borough shall serve a notice of intention to take possession of an abandoned building. The notice shall inform the owner and interested parties that the property has not been legally occupied for six months and of those criteria that led to a determination of abandonment.

(1) The notice shall provide that unless the owner or a party in interest prepares and submits a rehabilitation plan to the appropriate Borough officials, the Borough will seek to gain possession of the building to rehabilitate the property and the associated cost shall be a lien against the property, which may be satisfied by the sale of the property.

(2) After the complaint is filed, the complaint shall be served on the parties in interest in accordance with the New Jersey Rules of Court.

C. After serving the notice of intent pursuant to subsection B of this section, the Public Officer may enter upon that property after written notice to the owner by certified mail, return receipt requested, in order to secure, stabilize or repair the property, or in order to inspect the property for purposes of preparing the plan to be submitted to the court.

#### 12.17-14 Property owner, defense against complaint; requirements.

A. Any owner may defend against a complaint by submitting a plan for the rehabilitation and reuse of the property which is the subject of the complaint and by posting a bond equal to 125% of the amount determined by the Public Officer or the court to be the projected cost of rehabilitation. Any plan submitted by an owner to defend against a complaint shall be submitted within 60 days after the complaint has been filed, unless the court provides the owner with an extension of time for good cause shown.

B. A plan submitted by an owner pursuant to this section shall include, but not be limited to:

- (1) A detailed financial feasibility analysis, including documentation of the economic feasibility of the proposed reuse, including operating budgets or resale prices, or both, as appropriate;
- (2) A budget for the rehabilitation of the property, including sources and uses of funds, based on the terms and conditions of realistically available financing, including grants and loans;
- (3) A timetable for the completion of rehabilitation and reuse of the property, including milestones for performance of major steps leading to and encompassing the rehabilitation and reuse of the property; and
- (4) Documentation of the qualifications of the individuals and firms that will be engaged to carry out the planning, design, financial packaging, construction, and marketing or rental of the property.

#### C. *Court approval.*

- (1) The court shall approve any plan that, in the judgment of the court, is realistic and likely to result in the expeditious rehabilitation and reuse of the property which is the subject of the complaint.
- (2) If the court approves the owner's plan, then it may appoint the Public Officer to act as monitor of the owner's compliance. If the owner fails to carry out any step in the approved plan, then the Borough may apply to the court to have the owner's bond forfeited, possession of the building transferred to the Borough to complete the rehabilitation plan and authorization to use the bond proceeds for rehabilitation of the property.
- (3) The owner shall provide quarterly reports to the Borough on its activities and progress toward rehabilitation and reuse of the property. The owner shall provide those reports to the court on its activities that the court determines are necessary.

D. The court may reject a plan and bond if it finds that the plan does not represent a realistic and expeditious means of ensuring the rehabilitation of the property or that the owner or his

representatives or agents, or both, lack the qualifications, background or other criteria necessary to ensure that the plan will be carried out successfully.

**12-17.15      Owner unsuccessful in defending against complaint; mortgage or lienholders to be designated in possession of property.**

A. If an owner is unsuccessful in defending against a complaint, the mortgage holder or lienholder may seek to be designated in possession of the property by submitting a plan and posting a bond with the court as required hereunder. The plan shall be submitted within 60 days after the court has rejected the owner's plan, unless the court provides the mortgage holder or lienholder with an extension of time for good cause shown. If the court approves any such mortgage holder's or lienholder's plan, it shall designate that party to be in possession of the property for purposes of ensuring its rehabilitation and reuse and may appoint the Public Officer to act as monitor of the party's compliance.

(1) The mortgage holder or lienholder, as the case may be, shall provide quarterly reports to the court and the Borough on its activities and progress toward rehabilitation and reuse of the property.

(2) If the mortgage holder or lienholder fails to carry out any material step in the approved plan, then the Public Officer shall notify the court, which may order the bond forfeit, grant the Borough possession of the property, and authorize the Borough to use the proceeds of the bond for rehabilitation of the property.

**12-17.16      Borough to be designated in possession of property; submission of plan to court.**

A. If no mortgage holder or lienholder is not designated in possession of the property or does not seek to be designated in possession of the property, then the Borough shall submit a plan to the court. The plan shall designate the entity which shall implement the plan, which may be the Borough or that entity designated by the Borough.

B. The court shall grant the Borough possession of the property if it finds that:

(1) The proposed rehabilitation and reuse of the property is appropriate and beneficial;

(2) The Borough is qualified to undertake the rehabilitation and reuse of the property; and

(3) The plan submitted by the Borough represents a realistic and timely plan for the rehabilitation and reuse of the property.

C. The Borough shall take all steps necessary and appropriate to further the rehabilitation and reuse of the property consistent with the plan submitted to the court.

**12-17.17      Borough exercise of rights to further rehabilitation and reuse of property; designation of qualified rehabilitation entity.**

A. The Borough may remediate the property directly or may designate a qualified rehabilitation entity to act as its designee for the purpose of rehabilitation and reuse of the property consistent with the Borough's plans and objectives. This designation shall be made by Resolution of the Mayor and the Borough Council.

B. Regardless of whether the Borough exercises its rights directly or designates a qualified rehabilitation entity, while in possession of the property, the Borough shall maintain, safeguard, and maintain insurance on the property. Notwithstanding the Borough's possession of the property, nothing shall be deemed to relieve the owner of the property of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner.

**12-17.18 Borough deemed possessor of property; borrowing of funds; reporting and filing requirements.**

A. If the Borough has been granted possession of a property, the Borough shall be deemed to have an ownership interest in the property for the purpose of filing plans with public agencies and boards, seeking and obtaining construction permits and other approvals, and submitting applications for financing or other assistance to public or private entities.

(1) For the purposes of any state program of grants or loans, including but not limited to programs of the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency, possession of a property under this section shall be considered legal control of the property.

(2) Notwithstanding the granting of possession to the Borough, nothing shall be deemed to relieve the owner of the property of any obligation the owner or any other person may have for the payment of taxes or other Borough liens and charges, or mortgages or liens to any party, whether those taxes, charges or liens are incurred before or after the granting of possession.

(3) The granting of possession shall not suspend any obligation the owner may have as of the date of the granting of possession for payment of any operating or maintenance expense associated with the property, whether or not billed at the time of the granting of possession.

B. The court may approve the borrowing of funds by the Borough to rehabilitate the property and may grant a lien or security interests with priority over all other liens or mortgages other than municipal liens. Prior to granting this lien priority, the court shall find that: 1) the Borough sought to obtain the necessary financing from the senior lienholder, which declined to provide such financing on reasonable terms; 2) the Borough sought to obtain a voluntary subordination from the senior lienholder, which refused to provide such subordination; and 3) lien priority is necessary in order to induce another lender to provide financing on reasonable terms. No lien authorized by the court shall take effect unless recorded in the office of the clerk of the county in which the property is located. For the purposes of this section, the cost of rehabilitation shall include reasonable non-construction costs such as architectural fees or construction permit fees customarily included in the financing of the rehabilitation of residential property.

C. Where the Borough has been granted possession by the court in the name of the Borough, the Borough may seek the approval of the court to assign its rights to another entity, which approval shall be granted by the court when it finds that: 1) the entity to which the Borough's rights will be assigned is a qualified rehabilitation entity; and 2) the assignment will further the purposes of this section.

D. Where the Borough has designated a qualified rehabilitation entity to act on its behalf, the qualified rehabilitation entity shall provide quarterly reports to the Borough on its activities and progress toward rehabilitation and reuse of the property. The Borough or qualified rehabilitation entity, as the case may be, shall provide such reports to the court as the court determines to be necessary. If the court finds that the Borough or its designee have failed to take diligent action toward rehabilitation of the property within one year from the grant of possession, then the court may request the Borough to designate another qualified rehabilitation entity to exercise its rights, or if the Borough fails to do so, may terminate the order of possession and return the property to its owner.

E. The Borough shall file a notice of completion with the court, and shall also serve a copy on the owner and any mortgage holder or lienholder, at such time as the Borough has determined that no more than six months remain to the anticipated date on which rehabilitation will be complete. This notice shall include an affidavit of the Public Officer attesting that rehabilitation can realistically be anticipated to be complete within that time period and a statement setting forth such actions as it plans to undertake to ensure that reuse of the property takes place consistent with the plan.

#### **12-17.19      Petition for reinstatement of control and possession by owner.**

A. An owner may petition for reinstatement of the owner's control and possession of the property at any time after one year from the grant of possession, but no later than 30 days after the Borough has filed a notice of completion with the court or, in the event the notice of completion is filed within less than one year of the grant of possession, within 30 days after the Borough has filed notice.

B. The court may allow additional time for good cause if that additional time does not materially delay completion of the rehabilitation, place undue hardship on the Borough, or affect any of the terms or conditions under which the Borough has applied for or received financing for the rehabilitation of the property.

#### **12-17.20      Contents of petition; filing and payment requirements.**

Any petition for reinstatement of the owner's control and possession of the property shall:

(a) Include a plan for completion of the rehabilitation and reuse of the property consistent with the plan previously approved by the court;

(b) Provide legally binding assurances that the owner will comply with all conditions of any grant or loan secured by the Borough or repay those grants or loans in full, at the discretion of the maker of the loan or grant; and

(c) Be accompanied by payment equal to the sum of: (1) All Borough liens outstanding on the property; (2) All costs incurred by the Borough in bringing action with respect to the property; (3) Any costs incurred by the Borough not covered by grants or loans to be assumed or repaid pursuant to this section; and (4) Any costs remaining to complete rehabilitation and reuse of the property, as determined by the Public Officer, which payment shall be placed in escrow with the Clerk of the Court pending disposition of the petition.

#### **12-17.21      Obligations of owner prior to grant of petition.**

A. Prior to the granting of a petition on the part of the owner by the court, the owner may be required to post a bond or other security in an amount determined by the court, after consultation with the Public Officer, as likely to ensure that the owner will continue to maintain the property in sound condition. That bond or other security shall be made available to the Borough to make any repair on the property in the event of a code violation which is not corrected in timely fashion by the owner. The bond or other security may be forfeited in full in the event that the owner fails to comply with any requirement imposed as a condition of the reinstatement petition.

B. The owner may seek approval of the court to be relieved of this requirement after five years, which shall be granted if the court finds that the owner has maintained the property in good repair during that period, that no material violations affecting the health and safety of the tenants have occurred during that period, and that the owner has remedied other violations in a timely and expeditious fashion.

#### **12-17.22      Failure of owner to petition for reinstatement of control and possession of property; granting of title to the Borough; authority to sell.**

If the owner fails to petition for the reinstatement of control and possession of the property within 30 days after the entity in possession has filed a notice of completion or in any event within two years after the initial grant of possession, or if the owner fails to meet any conditions that may be set by the court in granting a reinstatement petition, upon petition from the entity in possession, the court may grant the Borough title or authorize the Borough to sell the property subject to any restrictions as may be set forth in this ordinance.

#### **12-17.23      Procedure of Borough seeking to gain title to property; authorization to sell; proceeds.**

A. Where the Borough seeks to gain title to the property, it shall purchase the property for fair market value on such terms as the court shall approve and may place the proceeds of sale in escrow with the court.

(1) The court may authorize the Borough to sell the building free and clear of liens, claims and encumbrances, in which event all such liens, claims and encumbrances shall be transferred to the proceeds of sale with the same priority as existed prior to resale, except that municipal liens shall be paid at settlement.

(2) The proceeds of the purchase of the property shall be distributed as set forth in Section 12-17.24 of this Ordinance.

B. The Borough may seek approval of the court to sell the property to a third party when the court finds that such conveyance will further the effective and timely rehabilitation and reuse of the property.

C. Upon approval by the court, the Borough shall sell the property on such terms and at such price as the court shall approve, and may place the proceeds of sale in escrow with the court.

#### **12-17.24      Distribution of proceeds.**

The proceeds paid shall be distributed in the following order of priority:

- (a) The costs and expenses of sale;
- (b) Other governmental liens;
- (c) Repayment of principal and interest on any borrowing or indebtedness incurred by the Borough and granted priority lien status;
- (d) A reasonable development fee to the Borough consistent with the standards for development fees established for rehabilitation programs by the New Jersey Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency;
- (e) Other valid liens and security interests, in accordance with their priority; and
- (f) The owner.

#### **12-17.25      Public Officer; authority to place lien on property prior to possession**

The Public Officer, with the approval of the court, may place a lien on the property to cover any costs of the Borough in connection with the aforementioned proceedings incurred prior to the grant by the court of an order of possession, which may include costs incurred to stabilize or secure the property to ensure that it can be rehabilitated in a cost-effective manner. Any such lien shall be considered a Borough lien.

#### **12-17.26      Court's denial of rights and remedies to lienholders and mortgage holders.**

A court may in its discretion deny a lienholder or mortgage holder any or all rights or remedies afforded lienholders and mortgage holders under this Ordinance, if the court finds that the owner of a property owns or controls more than a fifty-percent interest in, or effective control of, the lienholder or

mortgage holder or that the familial or business relationship between the lienholder or mortgage holder and the owner precludes a separate interest on the part of the lienholder or mortgage holder.

**12-17.27      Recourse of Borough against individuals or corporations.**

With respect to any lien placed against any real property, the Borough shall have recourse with respect to the lien against any asset of the owner of the property, if an individual; against any asset of any partner, if a partnership; and against any asset of any owner of a ten-percent interest or greater, if the owner is any other business organization or entity recognized pursuant to law.

**12-17.28      Properties eligible for tax sales; Borough requirements of municipalities; notice.**

The Borough may hold special tax sales with respect to those properties eligible for tax sale which are also on an abandoned property list. If the Borough elects to hold a special tax sale, it shall conduct that sale subject to the following provisions:

A. The Borough shall establish criteria for eligibility to bid on properties at the sale, which may include, but shall not be limited to: documentation of the bidder's ability to rehabilitate or otherwise reuse the property consistent with Borough plans and regulations; commitments by the bidder to rehabilitate or otherwise reuse the property consistent with Borough plans and regulations; commitments by the bidder to take action to foreclose on the tax lien by a date certain; and such other criteria as the Borough may determine are necessary to ensure that the properties to be sold will be rehabilitated or otherwise reused in a manner consistent with the public interest;

B. The Borough may establish minimum bid requirements for a special tax sale that may be less than the full amount of the taxes, interest and penalties due, the amount of such minimum bid to be at the sole discretion of the Borough, in order to ensure that the properties to be sold will be rehabilitated or otherwise reused in a manner consistent with the public interest;

C. The Borough may combine properties into bid packages, and require that bidders place a single bid on each package, and reject any and all bids on individual properties that have been included in bid packages;

D. The Borough may sell properties subject to provisions that, if the purchaser fails to carry out any commitment that has been set forth as a condition of sale pursuant to subsection A of this section or misrepresents any material qualification that has been established as a condition of eligibility to bid pursuant thereto, then the properties and any interest thereto acquired by the purchaser shall revert to the Borough, and any amount paid by the purchaser to the Borough at the special tax sale shall be forfeited to the Borough;

E. In the event there are two or more qualified bidders for any property or bid package in a special tax sale, the Borough may designate the unsuccessful but qualified bidder whose bid was closest to

the successful bid as an eligible purchaser;

F. In the event that the purchaser of that property or bid package fails to meet any of the conditions of sale established by the Borough pursuant to this section, and their interest in the property or properties reverts to the Borough, the Borough may subsequently designate the entity previously designated as an eligible purchaser as the winning bidder for the property or properties, and assign the tax sale certificates to that entity on the basis of that entity's bid at the special tax sale, subject to the terms and conditions of the special tax sale.

G. The Borough shall provide notice of a special tax sale pursuant to *N.J.S.A.* 54:5-26. The notice shall include any special terms of sale established by the Borough pursuant to subsections B, C or D of this section. Nothing shall prohibit the Borough from holding a special tax sale on the same day as a standard or accelerated tax sale.

#### **12-17.29 Eminent domain proceedings; establishment of fair market value.**

With respect to any eminent domain proceeding carried out under a tax sale of abandoned property, the fair market value of the property shall be established on the basis of an analysis which determines independently:

A. The cost to rehabilitate and reuse the property for such purpose as is appropriate under existing planning and zoning regulations governing its reuse or to demolish the existing property and construct a new building on the site, including all costs ancillary to rehabilitation such as, but not limited to, marketing and legal costs;

B. The realistic market value of the reused property after rehabilitation or new construction, taking into account the market conditions particular to the neighborhood or subarea of the Borough in which the property is located; and

C. The extent to which the cost exceeds or does not exceed the market value after rehabilitation, or demolition and new construction, and the extent to which any "as is" value of the property prior to rehabilitation can be added to the cost of rehabilitation or demolition and new construction without the resulting combined cost exceeding the market value as separately determined. If the appraisal finds that the cost of rehabilitation or demolition and new construction, as appropriate, exceeds the realistic market value after rehabilitation or demolition and new construction, there shall be a rebuttable presumption in all proceedings under this subsection that the fair market value of the abandoned property is zero, and that no compensation is due the owner.

#### **12-17.30 Removal of property from abandoned property list after tax sale.**

If a property, which an entity other than the Borough has purchased or taken assignment from the Borough of a tax sale certificate, is placed on the abandoned property list, the property shall be

removed from the list if the owner of the certificate pays all Borough taxes and liens due on the property within 30 days after the property is placed on the list; provided, however, that if the owner of the certificate fails to initiate foreclosure proceedings within six months after the property was first placed on the list, the property shall be restored to the abandoned property list.

**12-17.31 Interested parties' right to request for property to be placed on abandoned property list.**

A. Any interested party may submit in writing a request to the Public Officer that a property be included on the abandoned property list, specifying the street address and block and lot number of the property to be included and the grounds for its inclusion. Within 30 days of receipt of any such request, the Public Officer shall provide a written response to the party, either indicating that the property will be added to the list of abandoned properties or, if not, the reasons for not adding the property to the list.

B. Any interested party may participate in any redetermination hearing held by the Public Officer. Upon written request by any interested party, the Public Officer shall provide the party with at least 20 days' notice of any such hearing. The party shall provide the Public Officer with notice at least 10 days before the hearing of its intention to participate and the nature of the testimony or other information that is proposes to submit at the hearing.

If any part or parts of the Ordinance are for any reason held to be invalid, such adjudication shall not affect the validity of the remaining portions of this Ordinance.

All Ordinances or parts of Ordinances which are inconsistent herewith are repealed, but only to the extent of such inconsistency.

This Ordinance shall become effective immediately upon its final passage and publication as required by law.

Introduced: May 4, 2010  
Public Hearing: June 1, 2010  
Adopted: June 1, 2010

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Valerie T. Heilweil, RMC	Robert J. Bergen, Mayor
Borough Clerk	Borough of Keyport
Borough of Keyport	