**O: 2018 – 22A**

**AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 464 OF THE CODE OF THE TOWN OF PHILLIPSBURG, *RENTAL PROPERTY*, IN ORDER TO ADD A NEW ARTICLE II, *MULTIFAMILY HOUSING PRESERVATION AND RECEIVERSHIP***

 **WHEREAS** many citizens of Phillipsburg are adversely affected by blighted residential property, including both those who live in buildings that fail to meet adequate standards for health, safety and welfare or fail to meet reasonable housing code standards, and those who live in proximity to such buildings; and

 **WHEREAS,** substandard and deteriorating buildings are a public safety threat and nuisance, and their blighting effect diminishes health, public safety and property values in the neighborhoods in which they are located; and

**WHEREAS,** left to deteriorate over time, these substandard and deteriorating buildings are likely to be abandoned, thereby endangering neighborhood residents and resulting in increased costs to the Town of Phillipsburg; and

**WHEREAS,** the abandonment of substandard buildings furthermore results in the displacement of lower income tenants, thereby increasing the demand for affordable housing, which is already in short supply, and exacerbating homelessness faced by the citizens of New Jersey; and

**WHEREAS,** the number of distressed multifamily buildings in the State which could be maintained as safe, affordable housing could be significantly increased if adequate public resources were made available to alleviate negative conditions in the rental housing stock throughout the State; and

**WHEREAS**, while it is important to provide incentives for landlords to better maintain and improve their properties, it is recognized that there are situations in which it is necessary for other parties to intervene in the operation and maintenance of multifamily buildings, a procedure known as receivership, in order to ensure that they are not abandoned, and that they are maintained as sound, affordable housing, consistent with codes and safety requirements; and

**WHEREAS**, the Town Council, pursuant to the authority granted to it by N.J.S.A. 2A:42-114, *et. seq.* desires to establish processes in order to address issues attendant to the housing market within the Town as detailed above.

**NOW THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Phillipsburg as follows:

Section 1

 Chapter 464, *Rental Property*, of the Code of the Town of Phillipsburg is herby amended and supplemented by creating a new Article II entitled *Multifamily Housing Preservation and Receivership* as follows:

§464-11 **Purpose.**

 The purpose of this article is to address substandard and deteriorating buildings which are a public safety threat and nuisance, and whose blighting effect diminishes health, public safety and property values in the neighborhoods in which they are located.

§464-12 **Definitions.**

“Building” means any building or structure and the land appurtenant thereto in which at least half of the net square footage of the building is used for residential purposes; and shall not include any one to four unit residential building in which the owner occupies one of the units as his or her principal residence;

“Code” means any housing, property maintenance, fire or other public safety code applicable to a residential building, whether enforced by the municipality or by a State agency;

 “Commissioner” means the Commissioner of Community Affairs;

 “Department” means the Department of Community Affairs;

“Lienholder” or “mortgage holder” means any entity holding a note, mortgage or other interest secured by the building or any part thereof;

“Owner” means the holder or holders of title to a residential building;

“Party in interest” means: (1) any mortgage holder, lien holder or secured creditor of the owner; (2) any tenant living in the building; (3) any entity designated by more than 50 percent of the tenants living in the building as their representative; (4) the public officer; or (5) a non-profit entity providing community services in the municipality in which the building is located;

“Plaintiff” means a party in interest or a qualified entity that files a complaint pursuant to section 4 of P.L.2003, c. 295 (C.2A:42-117);

“Public officer” means an officer of the municipality appropriately qualified to carry out the responsibilities set forth in P.L.2003, c. 295(C.2A:42-114 et al.) who shall be designated by the mayor;

“Qualified entity” means any person or entity registered with the Department on the basis of having demonstrated knowledge and substantial experience in the operation, maintenance and improvement of residential buildings;

“Tenant” means a household that legally occupies a dwelling unit in a residential building.

§464-13 **Summary action to appoint receiver.**

A summary action or otherwise to appoint a receiver to take charge and manage a building may be brought by a party in interest or qualified entity in the Superior Court of New Jersey, Warren County.

§464-14 **Eligibility.**

 A building shall be eligible for receivership if it meets one of the following criteria:

1. The building is in violation of any State or municipal code to such an extent as to endanger the health and safety of the tenants as of the date of the filing of the complaint with the court, and the violation or violations have persisted, unabated, for at least 90 days preceding the date of the filing of the complaint with the court; or
2. The building is the site of a clear and convincing pattern of recurrent code violations, which may be shown by proofs that the building has been cited for such violations at least four separate times within the 12 months preceding the date of the filing of the complaint with the court, or six separate times in the two years prior to the date of the filing of the complaint with the court and the owner has failed to take action as set forth in section 9 of P.L.2003, c. 295 (C.2A:42-122).

§464-15 **Complaint.**

A complaint submitted to the court shall include a statement of the grounds for relief and:

a. Documentation of the conditions that form the basis for the complaint;

b. Evidence that the owner received notice of the conditions that form the basis for the complaint, and failed to take adequate and timely action to remedy those conditions; and

c. With respect to any building that contains non-residential facilities, including but not limited to commercial or office floor space, the complaint shall provide explicit justification for the inclusion of the non-residential facilities in the scope of the receivership order; in the absence of such justification, the court shall exclude such facilities from the scope of the receiver's duties and powers.

The complaint may include a recommendation of the receiver to be appointed.

§464-16 **Service of complaint; notice.**

The plaintiff shall serve the complaint and any affidavits or certifications that accompanied the complaint upon the parties in interest, the current owner of the property, and all mortgage holders and lienholders of record determined by a title search and in accordance with the Rules of Court.

Unless tenants have been provided with written notice to the contrary or the plaintiff has knowledge to the contrary, the business address at which the owner or an agent of the owner may be served shall be that address provided by the owner to the commissioner in registering the property under section 12 of P.L.1967, c. 76 (C.55:13A-12).

## §464-17 Appointment of receiver; abatement plan; payment of taxes, liens and maintenance expenses.

a. If the court determines, after its summary hearing, that the grounds for relief set forth pursuant to section 5 of P.L.2003, c. 295 (C.2A:42-118) have been established, the court may appoint a receiver and grant such other relief as may be determined to be necessary and appropriate. The court shall select as the receiver the mortgage holder, lienholder or a qualified entity, as defined pursuant to section 3 of P.L.2003, c. 295 (C.2A:42-116). If the court cannot identify a receiver, the court may appoint any party who, in the judgment of the court, may not have registered with the department pursuant to section 31 of P.L.2003, c. 295 (C.2A:42-142), but otherwise fulfills the qualifications of a qualified entity.

b. If the court determines, after its summary hearing, that the grounds for relief set forth pursuant to section 5 of P.L.2003, c. 295 (C.2A:42-118) have been established, but the owner presents a plan in writing to the court demonstrating that the conditions leading to the filing of the complaint will be abated within a reasonable period, which plan is found by the court to be reasonable, then the court may enter an order providing that in the event the conditions are not abated by a specific date, including the completion of specific remedial activities by specific dates, or if the conditions recur within a specific period established by the court, then an order granting the relief as requested in the complaint shall be granted.

The court may require the owner to post a bond in such amount that the court, in consultation with the party bringing the complaint and the public officer, determines to be reasonable, which shall be forfeit if the owner fails to meet the conditions of the order.

c. Any sums advanced or incurred by a mortgage holder or lienholder acting as receiver pursuant to this section for the purpose of making improvements to the property, including court costs and reasonable attorneys fees, may be added to the unpaid balance due said mortgage holder or lienholder subject to interest at the same rate set forth in the note or security agreement.

d. Nothing in this section shall be deemed to relieve the owner of the building of any obligation the owner or any other person may have for the payment of taxes or other municipal liens and charges, or mortgages or liens to any party, whether those taxes, charges or liens are incurred before or after the appointment of the receiver.

e. The appointment of a receiver shall not suspend any obligation the owner may have as of the date of the appointment of the receiver for payment of any operating or maintenance expense associated with the building, whether or not billed at the time of appointment. Any such expenses incurred after the appointment of the receiver shall be the responsibility of the receiver.

§464-18 **Expenses and fees; liability**

a. The receiver shall be entitled to necessary expenses and to a reasonable fee, to be determined by the court. The expenses incurred by a receiver in removing or remedying a condition pursuant to P.L.2003, c. 295 (C.2A:42-114 et al.) shall be met by the rents collected by the receiver or any other moneys made available for those purposes.

b. Nothing in P.L.2003, c. 295 (C.2A:42-114 et al.) shall be deemed to relieve the owner of the building of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner.

c. The activities of the receiver being appropriate and necessary to carry out a public purpose, the personnel, facilities, and funds of the municipality may be made available to the receiver at the discretion of the municipality for the purpose of carrying out the duties as receiver and the cost of those services shall be deemed a necessary expense of the receiver, which shall reimburse the municipality to the extent that funds are reasonably available for that purpose.

d. If the party in interest bringing a receivership action pursuant to section 4 of P.L.2003, c. 295 ([C.2A:42-117](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST2A%3a42-117&originatingDoc=N55353CF0EF1E11D99BC0AF502031754B&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Document))) is the public officer, the municipality shall be entitled to its costs in filing an application to the court and reasonable attorney fees, to be determined by the court, which may be a lien against the premises and collectible as otherwise provided under law.

§464-19 **Record book.**

The Clerk shall keep a book in which (s)he shall record and file all proceedings required to be taken by virtue of the provisions of this article.

§464-20 **Conflict with state law.**

Nothing contained in this article is intended to conflict with the State of New Jersey Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1 et seq.), and any amendments thereto, or with any regulations promulgated thereunder pertaining to the construction and maintenance of hotels and multiple dwellings.

Section 2

**Severability.** The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder off this Ordinance shall not be affected thereby.

Section 3

**Repealer.** Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

Section 4

**Effective Date.** This Ordinance shall take effect upon final passage and publication as provided by law.

**ATTEST: TOWN OF PHILLIPSBURG**

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VICTORIA L. KLEINER, RMC STEPHEN R. ELLIS

Municipal Clerk Mayor

DATED:

**CERTIFICATION**

I, Victoria L. Kleiner, Municipal Clerk for the Town of Phillipsburg, do hereby certify that the foregoing is a true copy of an Ordinance duly adopted by the Town Council at their October 09, 2018 meeting.

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 VICTORIA L. KLEINER,

 Municipal Clerk