ORDINANCE # 08-21

AN ORDINANCE AMENDING SECTION 5 OF THE VILLAGE OF GILBERTS CODE TO ESTABLISH BUILDING AND REGISTRY REGULATIONS

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Gilberts, Kane County, Illinois, that:

- Section 1. Recitals. The recitals set forth above are hereby incorporated into and made a part of this Ordinance as though set forth in this Section 1.
- Section 2. Amendment. Sections 5.26, 5.27, and 5.28 of the Village of Gilberts Code are hereby renumbered to be Sections 5.27, 5.28, and 5.29 and Section 5.26 shall be amended to hereafter be and read as follows:

5.26 VACANT BUILDING AND PROPERTY REGULATIONS

5.26.1 DECLARATION OF POLICY.

The purpose of this section 5.26 is to protect the public health, safety, and welfare by enactment of this section which:

- A. Establishes a program for identification, registration, and regulation of buildings which are or become vacant on and after the effective date of this section 5.26.
- B. Determines the responsibilities of owners of vacant buildings.
- C. Provides for administration, enforcement, including abatement of public nuisances, and imposition of penalties.

This section 5.26 shall be construed liberally to affect its purposes.

5.26.2 OTHER ORDINANCES.

This section 5.26 shall not be construed to prevent the enforcement of other applicable ordinances, codes, legislation, and regulations which prescribe standards other than are provided herein, and in the event of conflict, the most restrictive shall apply.

5.26.3 DEFINITIONS.

Unless otherwise expressly stated or clearly indicated by the context, the following terms shall, for the purpose of this section 5.26, have the meanings indicated in this section:

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

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

DANGEROUS BUILDING: A building defined as a "dangerous building" in section 5.2 of this code, as it may be amended. Such buildings are public nuisances.

CHIEF BUILDING INSPECTOR: The Chief Building Inspector or his or her designee.

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

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

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

PUBLIC NUISANCE: Includes the following:

- A. The physical condition, or uses of any building regarded as a public nuisance at common law, under the Illinois Compiled Statutes, or under this code; or
- B. Any physical condition, use or occupancy or any building or its appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, and unsafe fences or structures; or
- C. Any building which has unsanitary sewerage or plumbing facilities; or
- D. Any building designated by the Chief Building Inspector as unsafe for human habitation or use; or
- E. Any building which is manifestly capable of being a fire hazard, or manifestly unsafe or insecure as to endanger life, limb or property; or
- F. Any building which is unsanitary, or which is littered with rubbish or garbage, or which has an uncontrolled growth of weeds; or
- G. Any building that is dangerous, in a state of dilapidation, deterioration or decay; faulty construction; open or vacant and the doors, windows, or other openings are boarded up or secured, by any means other than conventional methods used in the design of the building or permitted for new construction of similar type; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and dangerous to anyone on or near the premises; or

H. Any building defined as a "dangerous building" by section 5.26.2 of this code, as it may be amended.

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

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

- A. A building at which substantially all lawful residential or business activity has ceased.
- B. The percentage of the overall square footage of occupied to unoccupied space or the overall number of occupied and unoccupied units shall be considered.
- C. The building is substantially devoid of contents. The condition and value of fixtures or personal property in the building are relevant to this determination.
- D. The building lacks utility services, i.e., water, sewer, electric or natural gas.
- E. The building is the subject of a foreclosure action.
- F. The building is not actively for sale as part of a contractual agreement to sell the building, the building lacks "for sale", "for rent" or similar signage.
- G. The presence or recurrence of uncorrected code violations.

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

- A. Unoccupied and unsecured; or
- B. Unoccupied and secured by boarding or other similar means; or
- C. Unoccupied and a dangerous structure; or
- D. Unoccupied and condemned by the Chief Building Inspector pursuant to applicable provisions of this code; or
- E. Unoccupied and has multiple code violations; or
- F. Unoccupied and the building or its premises has been the site of unlawful activity within the previous six (6) months; or
- G. Condemned by the Chief Building Inspector and unlawfully occupied; or
- H. Unoccupied for over one hundred eighty (180) days and during which time the Chief Building Inspector has issued an order to correct public nuisance conditions and same have not been corrected in a code compliant manner; or

I. Unoccupied for over two (2)

years.

But not including:

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

5.26.4 DETERMINATION.

Within sixty (60) days after the effective date of this section 5.26, the Chief Building Inspector shall evaluate all buildings in the Village he believes to be unoccupied on the effective date of this section 5.26 and make a determination for each as to whether the building is a "vacant building" within the meaning of section 5.26.3 of this code. The Chief Building Inspector may determine that a building which meets any of the criteria set forth in section 5.26.3 of this code is not to be regulated under this section 5.26 for a stated period, if upon consideration of reliable, substantiated and sufficient evidence, he or she determines that regulation of the building under this section 5.26 would not serve the public health, welfare, and safety and makes written findings in support of his decision. The determination shall be in writing and shall state the factual basis for the determination. For buildings the Chief Building Inspector determines to be "vacant buildings", he shall, within seven (7) days of making that determination, send notice of his written determination with the factual findings to the last taxpayer of record listed on the most recent Kane County tax roll. Said notice of determination shall be sent first class United States mail, with proper postage prepaid. Failure of delivery shall not excuse a person from complying with this section 5.26. The Chief Building Inspector may personally serve or cause personal service of the notice of determination. Any person making such service shall execute an affidavit attesting to the facts of service. The Chief Building Inspector shall maintain an affidavit of such mailing for each notice of determination sent.

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

The notice shall contain a statement of the obligations of the owner of a building determined to be a vacant building, a copy of the registration form the owner is required to file pursuant to section 5.26.6 of this code, and a notice of the owner's right to appeal the Chief Building Inspector's determination.

5.26.5 APPEAL OF DETERMINATION.

A. An owner of a building determined by the Chief Building Inspector to be a vacant building as provided for in this section 5.26 may appeal that determination to the Village Administrator. Such appeal shall be in writing and shall be filed with the Village Administrator within fifteen (15) days of the date of mailing of the notice of determination. The filing of an appeal stays the owner's obligation to register his building

as required by section 5.26.6 of this code. The appeal shall contain a complete statement of the reasons the owner disputes the Chief Building Inspector's determination, shall set forth specific facts in support thereof, and shall include all evidence the owner relies upon to support the appeal. The Village Administrator shall decide the appeal on the basis of facts presented by the owner in his or her written appeal and the Chief Building Inspector's written determination.

- B. The burden is upon the owner to present sufficient evidence to persuade the Village Administrator that had the evidence been known to the Chief Building Inspector at the time the Chief Building Inspector made the determination, the Chief Building Inspector would more likely than not have determined that the subject building was not a "vacant building" within the meaning of this section 5.26.
- C. The Village Administrator shall send written notice of his decision to the owner within ten (10) days of his or her receipt of the appeal. The Village Administrator may, but is not required to, seek additional information from the owner. The Village Administrator may, upon written notice thereof to the owner, take no more than ten (10) additional days, to decide the appeal if he or she determines that such additional time is required for consideration of the appeal.
- D. An owner who wishes to challenge applicability of this section 5.26 to his/her building without the Chief Building Inspector's determination having been made, shall set forth specific facts to support nonapplicability in a writing to the Chief Building Inspector. In the event the Chief Building Inspector determines that the subject building is a "vacant building", the owner shall have the right to appeal the Chief Building Inspector's determination to the Village Administrator as provided for herein.

5.26.6 OBLIGATION TO REGISTER.

The owner of a building who knows, or from all the facts and circumstances should know, that his or her building is or has become a "vacant building" within the meaning of this section 5.26 after the effective date of this section 5.26 or the owner of a building, which the Chief Building Inspector determines at any time to be a "vacant building", or the owner of a building whose appeal from the Chief Building Inspector's determination has been denied by the Village Administrator shall take the actions provided for in this section within fifteen (15) days after either the date of the Chief Building Inspector's notice of determination or occurrence of the facts which would cause a reasonable person to believe that the building was a "vacant building", or denial of the appeal, whichever is applicable. Registration does not exonerate the owner from compliance with all applicable codes and ordinances, including this section 5.26, nor does it preclude any of the actions the Village is authorized to take pursuant to this section 5.26 or elsewhere in this code.

A. Registration Requirements:

1. Register the building with the Chief Building Inspector, on a form provided by the Chief Building Inspector and pay the two hundred dollar (\$200.00) annual nonprorated vacant building registration fee. The form shall include, as a minimum, the name, street address, and telephone number of the owner; the case

name and number of any litigation pending concerning or affecting the building, including bankruptcy cases; and the name, street address, and telephone number of all persons with any legal interest in the building or the premises. The form shall require the owner to identify a natural person twenty one (21) years of age or older who maintains a permanent address in Kane County, Illinois, to accept service on behalf of the owner with respect to any notices the Chief Building Inspector sends pursuant to this section 5.26 or service of process in any proceeding commenced to enforce any provision of this section 5.26, and file with the Chief Building Inspector on the registration form, the name, address, telephone number, of said person. A street address is required. A post office box is not an acceptable address.

- 2. Renew the vacant building registration each year on the anniversary date of the first filing for the time the building remains vacant and pay the required two hundred dollar (\$200.00) annual fee; and
- 3. File an amended registration within fifteen (15) days of any change in the information contained in the annual registration. A new registration is required for any change in ownership whatsoever.
- B. Notice; Inspection: The form shall require the owner to indicate his or her "acceptance of notice by posting" consenting to service of notices sent or required to be sent, pursuant to this section 5.26, by posting on the building if the owner fails to renew the registration if required, or maintain as current with the Chief Building Inspector the information required regarding the person designated to accept notice and service of process.

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

- C. Insurance: Obtain liability insurance and maintain such insurance for as long as the building is vacant, and file evidence of such insurance with the Chief Building Inspector, as follows: five hundred thousand dollars (\$500,000.00) for a vacant residential building of one to three (3) units; seven hundred fifty thousand dollars (\$750,000.00) for a vacant residential building of four (4) to eleven (11) units; one million dollars (\$1,000,000.00) for a vacant residential building of twelve (12) to forty eight (48) units; two million dollars (\$2,000,000.00) for a vacant residential building of more than forty eight (48) units; and two million dollars (\$2,000,000.00) for a vacant manufacturing, industrial, storage, or nonresidential commercial building.
- D. Vacant Building Plan: At the time a building is registered as required herein, the owner shall submit a vacant building plan. The Chief Building Inspector may prescribe a form for the plan. If the owner fails to submit the plan as provided for by this section 5.26, the Chief Building Inspector may determine the plan. The plan shall contain the following as a minimum:

- 1. A plan of action to repair any doors, windows, or other openings which are boarded up or otherwise secured by any means other than conventional methods used in the design of the building or permitted for new construction or similar type. The proposed repair shall result in openings being secured by conventional methods used in the design of the building or by methods permitted for new construction of similar type with board removed. Boarding shall be accomplished with materials and methods described by the Chief Building Inspector and available from the Chief Building Inspector. The owner shall maintain the building in an enclosed and secure state until the building is reoccupied or made available for immediate occupancy. If the owner demonstrates that securing of the building will provide adequate protection to the public, the Chief Building Inspector may waive the requirement of an enclosure.
- 2. For buildings and premises thereof which are determined by the Chief Building Inspector as being or containing public nuisances, as defined in section 5.26.3 of this code, then the vacant building plan shall contain a plan of action to remedy such public nuisance(s).
- 3. A time schedule identifying a date of commencement of repair and date of completion of repair for each improperly secured opening and nuisance identified by the Chief Building Inspector.
- 4. When the owner proposes to demolish the vacant building, then the owner shall submit a plan and time schedule for such demolition.
- 5. A plan of action to maintain the building and premises thereof in conformance with this section 5.26.
- 6. A plan of action, with a time schedule, identifying the date the building will be habitable and occupied or offered for occupancy or sale. The time schedule shall include date(s) of commencement and completion of all actions required to achieve habitability. No plan which provides for compliance with this section 5.26 or, which will not, as determined by the Chief Building Inspector, achieve such compliance, within six (6) months, in the case of a vacant boarded building, and two (2) years, in the case of a vacant, unboarded, and code compliant building will be approved.
- 7. All premises upon which unoccupied or vacant buildings are located and the exteriors shall at all times be maintained in compliance with this code.
- 8. Exterior lighting according to standards established by the Chief Building Inspector and available from the Chief Building Inspector.
- E. Security Guard Service: On written notice of the Chief Building Inspector, provide bonded, licensed, and insured security guard service at the building between the hours of three o'clock (3:00) P.M. and eight o'clock (8:00) A.M. Such service to remain in place until the Chief Building Inspector gives written notice that the service is no longer required. Such service shall be required when the Chief Building Inspector makes a

written determination that the vacant building constitutes a fire hazard, is otherwise dangerous to human life or the public welfare, involves illegal or improper use, occupancy, or maintenance, under such conditions that boarding and securing the building are insufficient to prevent the actual or threatened harm.

F. Signage: Affixed to any building which is boarded, no smaller than two feet by two feet (2' x 2') and compliant with the Village's sign regulations ordinance, section 16 of this code, and providing the following information: The name, address, and telephone number of the owner, and in addition, for buildings which are the subject of a foreclosure action, the name, address, and telephone number of the plaintiff and the plaintiff's attorney, if any, in the foreclosure action. The sign must be placed so that its message is legible from the public way.

5.26.7 APPROVAL OF PLAN.

- A. Review Building Plan: The Chief Building Inspector shall review the proposed vacant building plan in accordance with the standards below. The Chief Building Inspector shall send notice to the owner of the vacant building of his determination.
- B. Standards For Plan Approval: In considering the appropriateness of a vacant building plan, the Chief Building Inspector shall include the following in his or her consideration and shall make written findings as to each:
 - 1. The purposes of this section 5.26 and intent of the Village Board to minimize the time a building is boarded or otherwise vacant.
 - 2. The effect of the building and the proposed plan on adjoining property.
 - 3. The length of time the building has been vacant.
 - 4. The presence of any public nuisances on the property.
 - 5. The likelihood that the plan or portion(s) thereof will prevent or ameliorate the condition it is designed to address.

5.26.8 AUTHORITY TO MODIFY PLAN, RIGHT OF APPEAL.

The Chief Building Inspector shall, upon notice to the vacant building owner, have the right to modify the vacant building plan by modifying the dates of performance, the proposed methods of action, or by imposing additional requirements consistent with this section 5.26 he or she deems necessary to protect the public health, safety, or welfare.

5.26.9 FAILURE TO COMPLY WITH PLAN.

Failure to have an approved plan within thirty (30) days of filing the registration form or failure to comply with the approved plan shall constitute a violation of this section 5.26 subjecting the owner of the building to penalties as provided in this section 5.26 and to any remedies the

Village may avail itself of as provided for herein and elsewhere in this code, including, but not limited to, an action to compel correction of property maintenance violations.

5.26.10 OTHER ENFORCEMENT.

The registration of a vacant building shall not preclude action by the Village to demolish or to take other action against the building pursuant to other provisions of this section 5.26, this code, or other applicable legislation.

5.26.11 CERTIFICATION.

A certificate of code compliance for vacant buildings issued by the Village and payment in full of all fees imposed pursuant to this section 5.26 are required prior to any occupancy of a vacant building.

5.26.12 BOARDING OF BUILDINGS.

It is the policy of the Village of Gilberts that boarding is a temporary solution to prevent unauthorized entry into a vacant building and that boarded buildings are a public nuisance. A vacant building may not remain boarded longer than six (6) months unless an extension of that time is part of a plan approved by the Chief Building Inspector.

A vacant building which is unboarded and code compliant and for which boarding is determined by the Chief Building Inspector on the basis of police reports, citizen complaints, and other information of other type considered reliable by reasonable persons, to not require boarding to prevent unauthorized entry may not remain vacant for more than two (2) years without an approved plan for occupancy, sale, demolition, or other disposition of the building.

5.26.13 ENFORCEMENT AND PENALTIES.

- A. Any person found to have violated any provision of this section 5.26 shall be subject to a minimum fine of one hundred dollars (\$100.00) per day per violation to a maximum of seven hundred fifty dollars (\$750.00) per day per violation, in addition to any other legal or equitable remedies available to the Village. Such other remedies include, but are not limited to, injunctive relief, application to a court of competent jurisdiction for a receiver, demolition, or condemnation, contracting for the repair or purchase of the premises, or foreclosure of any lien the Village may have thereon.
- B. A separate and distinct offense shall be committed each day on which such person or persons shall violate the provisions of this section 5.26.
- C. The Village may enforce this section 5.26 in its administrative adjudication system or through the court system.
- D. Nothing herein contained shall prohibit the Village from immediately condemning as provided for in this code a building or taking other immediate action upon a determination that the building is a public nuisance or poses an imminent danger to the occupants of the building, or the public, health, safety and welfare.

5.26.14 SEVERABILITY.

In the event any section of this section 5.26 or any part of any section of this section 5.26 is declared to be unconstitutional, such decision shall in no way affect the operation of any other section or part thereof the remainder of this section 5.26 shall remain in full force and effect.

5.27. CONFLICTING CODES AND ORDINANCES

If any provision or requirement of this Section 5 is found to be in conflict with any provision or requirement of this Section 5, this Code or any applicable law, ordinance, resolution, rule or other governmental regulation of any kind, the regulation which establishes the more restrictive rule or regulation which imposes the higher standards shall govern.

5.28. MODIFICATION/VARIATION

The provisions of this Section 5 shall not be modified or varied except upon written application to the Building, Zoning and Development Committee which will make a recommendation to the Village Board to grant or deny same.

5.29. ENFORCEMENT

Any person who violates, disobeys, omits, neglects, or refuses to comply with, or who resists the enforcement of any provision of Village Code Sections 5.9 through 5.26 inclusive, or who refuses to remedy a violation of any such provision or to remedy a hazard of fire, explosion, collapse, or contagion found to exist and duly ordered eliminated, shall be subject to the penalties provided for in Village Code Section 10.2.

Section 3. Conflict. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed insofar as they conflict herewith.

<u>Section 4.</u> <u>Effective Date.</u> This Ordinance will be in full force and effect upon its passage and approval by the Corporate Authorities in the manner provided by law and its publication in pamphlet form.

Passed this <u>2nd</u> day of September, 2008 by roll call vote as follows:

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Bruce Erbeck				
Trustee Guy Zambetti				
Trustee Ronald Mengarelli				
Trustee Patricia Mierisch				
Trustee Gordon Mueller				
Trustee Jesse Garcia				
President Thomas J. Wajda				

APPROVED THIS 15th DAY OF SEPTEMBER 2008

Thomas J. Wajda Village President

(SEAL)

ATTEST:

Village Clerk Darlene Mueller

Published:

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Village of Gilberts, Illinois

73 Industrial Drive 847-428-4167 847-551-3382 fax **Building Department**

Hours of Operation Monday – Friday 8:30 a.m. – 4:30 p.m.

www.villageofgilberts.com

VACANT BUILDING REGISTRATION Part I

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Village of Gilberts, Illinois

73 Industrial Drive 847-428-4167 847-551-3382 fax Building Department

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VACANT BUILDING REGISTRATION Part II

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