

Storefront Vacancies Best Practices

Prepared for the City of Cambridge

Community Development Department

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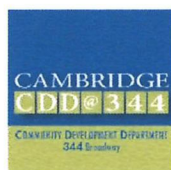
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Executive Summary

The City of Cambridge is fortunate to have a robust local economy that extends to its retail and restaurant sectors and a low commercial vacancy rate—approximately 4% for ground floor retail in the district¹ compared to a national retail vacancy rate of 10%. Despite this, the City and the community have identified several existing vacant storefronts that are either 1) large in size, 2) visually prominent, or 3) vacant for long periods of time. Even temporary vacancies, through normal turnover, can have a negative impact on the perception of a commercial corridor's vitality and quality of the consumer shopping experience. This report provides a review of best practices related to vacant storefront programs and policies, including registries and storefront activation strategies. These best practices focus on efforts to maintain street level activity, protect property values, maintain neighborhood integrity and accessibility, safeguard against economic property blight, protect city resources, and ensure the safe and sanitary maintenance of vacant retail storefronts.

After conducting stakeholder interviews, it was found that vacancies in Cambridge do not seem to have a single underlying cause, but are a combination of both site-specific and district-level factors, and therefore likely require a broad set of strategies as opposed to a single policy or program. It was also determined that strategies are likely to be more effective if informed by open channels of communication between the City and the owners of vacant properties. Open dialogue can help to determine if strategies should be geared towards assistance with 1) procuring a tenant to fill the space, 2) temporary activation of the space during an intermediary period, or 3) measures to improve the appearance and aesthetics of a vacancy without regard to activation. Based on the findings from stakeholder interviews and scan of best practices, it is recommended that the City of Cambridge consider an expansive toolkit of strategies informed through active communication with property owners to ensure that the right tools are employed and successful outcomes achieved.

Additional investigation was conducted into the use of Vacant Property Registration Ordinances (VPROs) to assist with curtailing of vacant spaces. Key findings from this investigation revealed that the structure and effectiveness of this type of ordinance can vary widely from one example to the next, depending on the objective for which it was initially crafted and larger market trends over time. While the ability for a VPRO to create better dialogue with property owners was a consistent and desirable outcome in the case studies contained herein, the overall impact on commercial vacancies and activation of underutilized space is much more nuanced.

¹ City of Cambridge Economic Development Division Business Data 2016

Main Findings – Cambridge Vacancies

Initial stakeholder outreach included conversations with representatives from Cambridge business and merchant associations, local and institutional property owners, retail advisory firms, and public economic development agencies. The conversations made clear the reasons behind vacant storefronts in the City of Cambridge are numerous and multi-faceted. What follows is a summary of the various causes that were identified, categorized based on whether they were unique to an individual location, or an aspect of the larger district.

Site-specific Causes for Vacancies

- **Knowledge gap:** Smaller, independent property owners may lack an understanding of appropriate asking rents for a commercial tenant, the best way to market their space to prospective tenants, or how to assist tenants with occupying the space effectively. This is further exacerbated when property owners employ non-local real estate agents that may not be adept working within the Cambridge market and are not privy to the unique character of each sub district and their respective customer bases. Still other property owners may not be able to afford traditional brokerage services and will attempt to go it alone instead.
- **Tax write-off:** Institutional investors with large real estate portfolios may benefit from keeping certain commercial properties vacant as part of a larger strategy to claim tax write-offs on passive income. This scenario not only creates a disincentive to the owner to find a long-term tenant, but also temporary users like pop-ups.
- **Tenant attraction strategy:** Property owners may have a deliberate plan to attract a specific tenant to complement the larger retail mix. In several instances, it was found that property owners had turned down offers from credit-worthy formula retail tenants offering more competitive rents and elected instead to wait for a particular operator perceived to better complement neighboring uses.
- **Development/lease negotiation:** Some vacancies are the result of owners seeking to develop or rehabilitate properties. During this period, the space may or may not have a committed tenant, though lease negotiation can also contribute to prolonged vacancy.
- **High asking rents:** Property reappraisals may increase real estate tax obligations to property owners, wherein they pass the additional expense on to their tenants through higher rents, thereby contributing to turnover/vacancies.
- **Speculative rents:** Property owners located in central locations of high-demand may feel justified holding out for high rents, believing the long term benefit outweighs short term losses.
- **Disinterested owner:** Property owners in peripheral commercial areas may be less beholden to the community or feel less compelled to activate their space than those located in areas like Harvard Square and Central Square.
- **Community opposition:** In instances where a property owner procures a tenant but the community opposes the use/operator, it can delay occupancy.

District-level Causes for Vacancies

- **Licensing and permitting:** The challenges of negotiating the City's licensing and permitting process was the most frequently mentioned reason for commercial vacancies, with many

describing the process as “onerous,” especially for those without prior experience. Merchants and property owners were said to lack an understanding of codes that can read opaquely or leave too much room for discretionary interpretation by inspectors. There were additional concerns that the City lacked sufficient capacity to conduct inspections for permits due to a growth in the number of projects without proportional growth in inspection staff.

- **Generational change:** Longstanding property owners that are unable to convey their asset to family members may instead sell to institutional investors. Some stakeholders felt this meant more emphasis on the bottom line and less emphasis on a district’s character and vibrancy—several stakeholders cited evidence of this given that longstanding property owners were more likely to provide below-market rents to the “right” tenant and engage in temporary activations like pop-ups until they found a long-term tenant.

The myriad causes of vacancies identified make clear there is a need for strong channels of communication between property owners and the City to identify what (if any) strategy is required to successfully restore the vacancy to an active state.

For example, a program that facilitates pop-ups will not address a space being actively rehabilitated by a development company. Similarly, providing technical assistance and marketing resources does not address a vacant storefront where the property owner is already engaged in a deliberate tenant attraction strategy. Rather, for a space that is being actively rehabilitated, the primary concern should be maintaining an aesthetic appearance that at best continues to engage passersby and at the very least does not present a visual eyesore. For a property owner with a deliberate tenant attraction strategy, energy and resources are better spent considering how liability concerns might be addressed to facilitate temporary programming in the intermediate period. While some isolated examples may require a more punitive measure, it is not in the best interest of the larger district to impose such measures indiscriminately and without a clear understanding of the scope of the issue.

Recommendations and Best practices

Based on the findings of the previous section, a scan of best practices was conducted, which were then categorized into two sections based on their intended objective.

1. Tenant attraction
2. Temporary activation and appearance

The first category, tenant attraction, refers to different strategies to provide resources and information to both merchants and property owners to help facilitate the lease-up of a ready-to-tenant vacant space. The second category, temporary activation and appearance, refers to strategies perceived to improve the customer experience pertaining to sites that may demonstrate some form of economic hardship, require rehabilitation, or otherwise face a delay in receiving a long term suitable tenant.

Tenant Attraction Strategies

1. Crowd-sourced tenant attraction platform

Several stakeholders explained that smaller property owners struggled with knowledge gaps when attempting to tenant vacant spaces. By implementing a platform where members of the community can both identify vacant storefronts as well as posit potential tenants, property owners can gain a greater sense of the type of operator that will be more successful in the space, even going so far as to use such information to engage potential tenants and show demonstrated demand. It should be stated that these platforms be purely for advisory and/or educational purposes and carry no legal mandate regarding how the property owner may tenant their space.

Best practice: Hoodstarter² - Visitors to the website can post the address of a vacant space on the platform and suggest what they think should go inside it. Community then gets to vote on and propose additional ideas. Ideas receiving the most votes will attract the attention of entrepreneurs, small business owners, and/or property owners. Voting can also be shared on social media platforms. Currently, the Hoodstarter platform is limited to the Twin Cities and still in developmental stages.

2. District assessments

Traditional stakeholder outreach strategies that include customer intercept surveys, focus groups, and community forums should continue to be employed to gather information on local retail demand in order that it be collected and communicated to merchants and property owners to assist with retail attraction.

Best Practice: City of Cambridge CDD Customer Intercept Program – The Economic Development Division has long performed intercept surveys in Cambridge’s discrete commercial districts to better inform tenant attraction and planning processes.

3. Interactive map/portal to assist with navigating zoning/use restrictions

² See also: <https://www.hoodstarter.com/>

Licensing and permitting were frequently mentioned as impediments to tenanting spaces, given the challenges navigating the regulatory environment. This type of tool has had success in Boston in helping merchants understand the regulatory environment and where their use complies with existing zoning, though the buildout of the platform and implementation were resource intensive and costly.

Best practice: [Boston.zoningcheck.com](https://boston.zoningcheck.com/)³ - Provided by the City of Boston, the platform helps simplify the site selection process for businesses by showing the prevailing zoning use regulations. Users select the type of business they're planning to open, and a map delineates where that use is prohibited, conditional, or permitted as-of-right. Users can also submit zoning inquiries directly through the website.

4. **Appoint a small business liaison**

It is acknowledged that the City of Cambridge has already taken steps towards the creation of a position to liaise between small businesses and the City of Cambridge. It is recommended that this position continue to be developed with an eye towards assisting businesses and merchant associations navigate the City's regulatory environment, while also providing additional services such as educational workshops and webinars.

Best practice: Department of Small Business Services, NYC – SBS regularly provides free training opportunities to staff and board members of community-based organizations (including BIDs and merchants associations) on topics that include fundraising, managing finances, marketing, legal issues, board governance, and strategic planning.

Best practice: Chicago Illinois – In 2014, the City appointed a Special Deputy for Regulatory Reform tasked with reviewing Chicago's municipal code with an eye to eliminating outdated regulations and ordinances, making the code easily available to small businesses and individuals and establishing procedures to ensure the code remains current and available.⁴

Temporary Activation Strategies

5. **Create regulatory flexibility for pop-up uses through temporary use permits**

Multiple interviewees said one-day hawker/entertainment permits can be tedious to acquire and it would be helpful to streamline this process.

Best practice: City of Austin, TX – To help facilitate temporary activations, the City created a Pop-up Retail Ordinance in 2011 (§25-1-364)⁵ that allows for issuance of temporary Certificates of Occupancy, though they still must comply with underlying zoning. Permit can be issued for up to 45 days and renewed once for a maximum of 90 days.

6. **Streamline short-term insurance / liability agreements**

³ See also: <https://boston.zoningcheck.com/>

⁴ See also: <https://datasmart.ash.harvard.edu/news/article/streamlined-permitting-licensing-599>

⁵ See also: https://library.municode.com/TX/Austin/codes/land_development_code?nodeId=TIT25LADE_CH25-1GEREPR_ART9CECOOC_S25-1-364TECEOC

An impediment to temporary activations and pop-ups was the need to acquire short-term liability insurance. One option to streamline the process is to help facilitate partnerships between existing pop-up brokers and consulting firms that specialize in providing these services.

Best practice: St. Anthony Park Pop-up Shop – St. Anthony Park Community Council, a nonprofit resident/business association in St. Paul, Minnesota, already had liability insurance coverage for their office and council activities; they acted as the master licensor and policy holder for a pop-up shop concept while tenants were added as “additional insureds” to the councils existing liability insurance policy.⁶

7. Continue to support storefront improvement programs

Some stakeholders claimed that vacant buildings in states of disrepair are impossible to activate without considerable capital expense. For that reason, the City should continue to make available and promote programs that assist with capital improvements that make spaces more tenant-ready, code compliant, and improve aesthetic conditions.

Best practice: City of Cambridge CDD Storefront Improvement Program - Cambridge property owners can access technical and financial resources to renovate/restore commercial building exterior facades through the program, which provides matching grants for ADA and façade improvements.

8. Partner with local nonprofits/institutions to facilitate temporary art installations

This was a component of the Town of Arlington’s VPRO, but described as hard to execute effectively without sufficient resources. Where there seemed to be the most success in carrying out similar installations in vacant spaces, there was often a partnering organization with capacity and/or experience.

Best practice: City of Cambridge CDD Small Business Challenge – In FY2018, the East Cambridge Business Association received support from the program to commission local business owners to design creative displays in vacant, first-floor spaces in the district.

Best practice: Window/Dressing in Spokane Washington - This nonprofit organization provides window art installations, business incubation, and pop-ups with artist profiles and a location map of different installations appearing on their website.

Best practice: Milwaukee’s Department of Neighborhood Services instituted an Artistic Board-Up Program, partnering with Wells Fargo to sponsor the artistic board-up of ten city-owned residential and commercial properties all located within a Neighborhood Revitalization Strategy Area.⁷

⁶ It is important to note here at the City of Cambridge is self-insured, and therefore this recommendation is not a possibility for the City.

⁷ See also: <http://city.milwaukee.gov/AntiGraffiti/Artistic-Board-Up.htm#.WxaaYe4vxpg>

Best practice: No Longer Empty – This nonprofit is dedicated to orchestrating site specific public art exhibitions in empty storefronts and is already explicitly referenced on the City of Cambridge CDD Vacant Storefront Activation Resources webpage.

Main Findings - Vacant Property Registration Ordinances

In addition to the best practices identified in the preceding section, an investigation of the potential role of a Vacant Property Registration Ordinance (VPRO) was conducted. This type of ordinance, implemented in numerous cities and towns across the country, requires that owners of vacant commercial properties submit information to a registry and pay an annual fee for each year that the property remains vacant. In so doing, the City or Town is able to track and monitor vacant properties, establish a dialogue with property owners to understand the nature of the vacancy, and develop strategies to help the owner either tenant the space, temporarily activate it, or else adhere to minimum standards for the appearance and maintenance of the property while vacant.

VPROs vary considerably based on the location and context in which they are established. To determine whether such a policy would have utility for the City of Cambridge required a review of select case studies based on examples within comparable regulatory and/or commercial environments. These case studies include:

1. Arlington, Massachusetts
2. New Bedford, Massachusetts
3. Lowell, Massachusetts
4. San Francisco, California
5. Washington, DC

In developing a VPRO, the first question to be asked is “What issue is the VPRO trying to solve?” In developing an understanding of a policy’s intended scope, further consideration can be given to ordinance structure and the relevance to the Cambridge context, leading to the following questions:

- How does the VPRO define a vacancy?
- What is the threshold amount of time after which a property must submit to a registry?
- How is the registration fee determined?⁸
- Under what conditions can a property owner seek a waiver from the registration fee?
- What other requirements does the VPRO place on the property owner in terms of maintenance and appearance?
- What are the fines for failing to register?

Answering these questions in the aforementioned case studies yielded the following key findings:

- A significant number of VPROs were created in response to the bursting of the housing bubble in the mid to late 2000s and the ensuing foreclosure crisis. Though not always the case, commercial properties appear to be included more as an afterthought and are not treated as qualitatively unique from residential properties. San Francisco is a notable example in that it amended its VPRO to treat commercial and residential properties discretely in 2014.

⁸ If the City of Cambridge were to propose a fee, the fee would have to be determined based on what amounts would be necessary to reimburse the City’s administrative costs, and not to increase revenue.

- VPROs almost always resulted in improved communication between property owners/lending institutions and municipal agencies, whereas the overall impact on vacancy rates is less clear. During interviews with representatives from each municipality, they offered anecdotal evidence in support of the VPRO's efficacy but generally did not provide substantive data.
- The enforcement of VPROs is largely discretionary, typically based on the judgement of the building inspector and their determination of what constitutes a vacancy at the time of inspection.
- The timetable wherein a property owner is required to report a vacancy varies, but typically falls between 30 and 90 days, with fees typically being due at the time of registration.
- The structure of registration fees vary with some cases adopting a flat rate year over year, and others growing cumulatively/incrementally over the lifespan of the vacancy. Those VPROs that were more specific to commercial storefronts tended to be consistent from year to year.
- Fine structures for failing to register vary, but tend to have the capacity to accrue rapidly for persistent and repeat offenders.
- Exemptions and waivers for registration fees are typically discretionary and determined based on the proceedings of a hearing. Only the Town of Arlington contained an explicit provision granting a waiver in exchange for temporary activation of the vacant space.
- Most VPROs require that vacant properties adhere to preexisting standards for sanitary, building, and fire codes. Arlington differed insofar as it discourages boarding up of properties when avoidable.⁹
- All VPROs required that owner contact information be posted in a prominent and visible location.

⁹ Cambridge property owners are currently required to comply with the building, fire safety, sanitary, and electrical codes.

Registry Case Studies

Arlington, Massachusetts

Title V Article 17 – Registration and Maintenance of Vacant Commercial and Industrial Buildings¹⁰

- **What has historically been the predominant cause of vacant spaces?**

The ordinance was conceived in response to several prominent retail vacancies concentrated in CBD, with two specific property owners refusing to actively tenant the space. Residents, expressing concern over the impact on property values and the potential to compound into more vacancies, demanded the city take action.

- **When was the ordinance enacted?**

The ordinance was first developed in 2017, but has been subject to recent proposed bylaw amendments this year, increasing the timetable for registering the property, and requiring the registration fee be due at time of registration instead of on a regularly occurring date.

- **What has been the impact of the ordinance? Positives? Negatives?**

According to city representatives, the program has "worked really well" by filling many of the identified vacancies and improving communication with property owners. However, a component of the ordinance that provides fee waivers in exchange for property owners providing temporary art activations in their space has received criticism from the Town Commission on Arts and Culture and has required more work/coordination than anticipated.

- **What is the stated purpose of the ordinance?**

"To protect the welfare and economic vitality of the residents of the Town of Arlington by protecting property values, maintaining neighborhood integrity and accessibility, safeguarding against economic property blight, protecting Town resources, and ensuring the safe and sanitary maintenance of commercial and industrial vacant properties."

- **How does it define a vacancy?**

Any property that "is not legally occupied, is abandoned, or is not used for a period of at least 90 consecutive days or longer by occupants having custody or legal right of entry to such property; or is intermittently occupied by persons with legal right of entry, but exhibits in the opinion of the Building Inspector dilapidated walls, roof or doors which fail to prevent the entry of a trespasser for a period of more than 7 days."

- **At what point must a vacancy be registered?**

¹⁰ See also: <https://www.arlingtonma.gov/town-governance/laws-and-regulations/town-bylaws/title-v-regulations-upon-the-use-of-private-property#17>

Within 90 days of last legal occupancy. Fees are due at time of registration. In its first iteration, the ordinance required registration within 7 days, and that fees be paid no later than October 15th of each calendar year. The proposed amendments were designed to discourage property owners from hastily tenaning their spaces with less-desirable uses (e.g. formula retail, vape shops, etc.). Registration requires a statement by the owner reflecting their efforts to regain occupancy.

- **How is the registration fee determined/structured?**

Initial and renewal registration fees are \$400 per storefront annually (based on estimated cost to the city of \$100 for quarterly inspections).

- **Under what conditions can an owner seek a waiver/exemption?**

Demonstration of financial hardship, or by agreeing in writing to display public art for a period of up to one year and subject to the availability of public art. Demonstration of financial hardship is subject to a 30-day review period and is reevaluated on a quarterly basis until property is leased or sold.

In interviews with Arlington representatives, it was intimated that the overall waiver/exemption process can be largely discretionary, including if the owner can show a good faith effort to tenant the space.

- **How must the owner/property manager maintain a registered vacancy?**

Vacant buildings must be maintained in accordance with all applicable local and state Sanitary Codes, Building Codes and Fire Codes; must promptly repair all broken windows, doors, other openings; boarding up is only permitted as temporary measure unless the Building Inspector determines otherwise, in which case boards or coverings must be colored to blend with the existing building color scheme. The building shall be maintained so as to appear not to be vacant. Advertising materials must be approved by the Planning Director.

- **What is the fine structure for failure to register and/or additional violations?**

Failure to register or other infractions are fined at \$100 per day in total.¹¹ Failure to pay registration or fines will result in a lien against the property.

¹¹ Under Massachusetts State Law G. L. c. 40, § 21D, a municipal fine may not exceed \$300 per offense per day (with each day being a separate offense).

Lowell, Massachusetts

Article II: Vacant and Foreclosing Property - §227-7-§227-16¹²

- **What has historically been the predominant cause of vacant spaces?**

The ordinance was originally adopted as a result of the high rate of foreclosed properties in the City after the housing foreclosure crisis of the mid to late 2000s. Lowell saw a dramatic increase in foreclosed/bank-owned properties, which were not being put back on the market. It was an effort to get a handle on the scope of the crisis, and to obtain contact information from the lenders who were responsible for the vacant/foreclosed properties.

- **When was the ordinance enacted?**

2008

- **What has been the impact of the ordinance? Positives? Negatives?**

The ordinance has been relatively successful in allowing the City to be aware of the scope of vacant/foreclosed properties and was mostly unchanged for approximately 5 years. After that time, it was realized the ordinance was creating better awareness of the problem but was not providing any incentives for lenders to work to get properties rehabilitated and back on the market. In response, the fee structure was amended into its current escalating structure. In so doing, it is hoped that the escalating structure will get properties out of the VAF process as soon as possible, while covering costs to the City.

- **What is the stated purpose of the ordinance?**

"To protect and preserve public safety, security, and quiet enjoyment of occupants, abutters, and neighborhoods."

- **How does it define a vacancy?**

"Any property not legally occupied in the preceding 90 days and not subject of an active building permit...The Commissioner or designees shall have the discretion to determine when and how such inspections are to be made."

- **At what point must a vacancy be registered?**

If the property is vacant not resulting from foreclosure, then registration shall be filed within 90 days of the last day of legal occupancy with the Division of Development Services, unless the property is the subject of an active and valid building permit. Fees are due at the time of registration.

¹² See also: <http://www.mcs360.com/documents/compliancedoc/VPR/VPR%20Ordinance%20-%20Lowell,%20MA.pdf>

- **How is the registration fee determined/structured?**

Fee builds cumulatively. Initial registration fee is \$1,000 per storefront, and increases by an additional \$1,000 with each subsequent year.

- **Under what conditions can an owner seek a waiver/exemption?**

The ordinance states that “Any person aggrieved by the requirements of this article may seek an administrative appeal by making written application to the City Manager, who may designate a hearing officer to hear appeals pursuant to this article.”

(Exemptions are not explicitly detailed)

- **How must the owner/property manager maintain a registered vacancy?**

Properties shall be maintained in accordance with all relevant sanitary codes, building codes, and local ordinances and regulations relative to minimum maintenance, snow removal, health nuisances, and securing of property. The registering entity shall affix to the building, in a location clearly visible from the public way, the name and twenty-four-hour contact phone number of the individual or property management company responsible for maintenance of the property.

- **What is the fine structure for failure to register and/or additional violations?**

Failure to register with the Commissioner is punishable by a fine of up to \$300, with each successive week constituting a separate offense.¹³ Failure to respond to City communications within the required time frame is punishable by a fine of up to \$300, with each such fine considered a separate offense. Failure to maintain the property is punishable by a fine of up to \$300, with each new week constituting a new offense. Any expenses incurred by the City shall be recoverable by placing a lien on the property.

Lowell Registration Fee/Fine Schedule		
Department/Reference	Unit/frequency	Amount
Registration of vacant and foreclosed properties	First year, annual	\$1,000
	Each subsequent renewal, cumulative	\$1,000
Failure to register	Per week	Up to \$500
Cost/expenses incurred by City	As applicable	At cost
Local property manager registration	Annual	\$100
Failure to identify a local individual or property management company for a vacant property	Per occurrence	\$300
Legal use determination		\$250
Rejected application		\$50

¹³ Under Massachusetts State Law G. L. c. 40, § 21D, a municipal fine may not exceed \$300 per offense per day (with each day being a separate offense).

New Bedford, Massachusetts

Article VIII, §6-140-§6-151: Regulation of Vacant Buildings ¹⁴

- **What has historically been the predominant cause of vacant spaces?**

Similar to Lowell, the ordinance was a response to high rates of foreclosure and poor communication with banking/lending institutions.

- **When was the ordinance enacted?**

2008

- **What has been the impact of the ordinance? Positives? Negatives?**

"Overall results have been positive. Maintenance has improved. There is now a robust database of information on vacant properties. Communication with property owners is better."

- **What is the stated purpose of the ordinance?**

"To assist the city government in protecting the public health, safety and welfare of its residents by encouraging the prompt repair, rehabilitation, and subsequent occupancy of vacant properties."

- **How does it define a vacancy?**

This is largely discretionary and determined during inspection, though also classified by the following: "Any commercial building in which no person or entity actually conducts a lawfully licensed business" or "any building in which more than one-half of the total exterior windows and doors are broken, boarded or open without a functioning lock shall be deemed 'vacant' regardless of occupancy."

- **At what point must a vacancy be registered?**

Within 45 days of a building becoming vacant. Fees are due on or before November 15th of each calendar year. This will trigger the inspection process, wherein the owner must pay a \$500 inspection fee to the city within 30 days of the date of inspection or face a lien on the property.

- **How is the registration fee determined/structured?**

Fee builds incrementally from year to year, beginning at \$500 per vacancy. Registration fees covering the administrative cost of monitoring and ensuring proper maintenance of vacant buildings shall be paid by the owner, based on the duration of the vacancy.

New Bedford Registration Fee Schedule

¹⁴ See also: http://newbedford.wpengine.netdna-cdn.com/inspectional-services/wp-content/uploads/sites/21/2013/11/VBR_forms_ordinance_codes.pdf

\$500	Vacant less than one year
\$1,000	Vacant for at least one but less than two years
\$2,000	Vacant for at least two but less than three years
\$3,000	Vacant for three years or more

- **Under what conditions can an owner seek a waiver/exemption?**

Appeal requests shall be limited solely to the issues of whether the building is vacant and how long the building has been vacant. The owner shall have the burden of proof on appeal.

- **How must the owner/property manager maintain a registered vacancy?**

Within 15 days of the time a building is to be registered as required, the owner shall post upon any building which is boarded a sign no smaller than 2ftx2ft with owner information.

The ordinance makes no other specific mention if/how the property needs to be secured or maintained.

- **What is the fine structure for failure to register and/or additional violations?**

Any person failing to register a vacant building, failing to pay the registration fee or otherwise, shall be subject to a fine of \$300 per offense, with each day constituting a separate offense.¹⁵

¹⁵ Under Massachusetts State Law G. L. c. 40, § 21D, a municipal fine may not exceed \$300 per offense per day (with each day being a separate offense).

San Francisco, California

Building Code, Ordinance No. 182-14 – Vacant or Abandoned Commercial Storefronts and Registration Fee¹⁶

- **What has historically been the predominant cause of vacant spaces?**

A report released by the City of San Francisco Budget and Legislative Analyst's Office¹⁷ identified the following observed causes of commercial vacancies:

- Normal turnover
- Non-leasable buildings (issues with code compliance)
- Lack of information/resources for procuring tenants
- Non-conforming uses
- Rent speculation
- Absentee landlords
- Neighborhood conditions making property unattractive
- City regulations and zoning exacerbating pressure on retail and services
- Disputes among partnership or family ownership
- Landlords not willing to improve the property
- Landlords waiting for a particular type of tenant

- **When was the ordinance enacted?**

First established in 2009, and subsequently amended in 2014 to create discrete provisions for residential versus commercial properties.

- **What has been the impact of the ordinance? Positives? Negatives?**

The ordinance has not been effective as the Department of Building Inspections “does not pro-actively identify vacant commercial properties” and has largely relied on citizen complaints and self-reporting by the property owner. There is also little to no monitoring of the vacancies after registration and overall enforcement is weak. Additionally, DBI has historically failed to post the registry online or provide a portal for the public to view and report vacancies. Recent efforts are being made to strengthen the ordinance through more capacity and more consistent enforcement, spurred largely by the community/residents.

Vacancy rates did decline from 9% in FY 2012-2013 to 5% in FY 2015-2016, but “it cannot be determined how much the programs caused this reduction and how much was attributable to broader economic or other factors.”

- **What is the stated purpose of the ordinance?**

¹⁶ See also: <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0182-14.pdf>

¹⁷ Budget and Legislative Analyst's Office, City and County of San Francisco. Policy Analysis Report Re: Preventing and Filling Commercial Vacancies in San Francisco, 2018 Update. January 16th, 2018.

To reduce the number of vacant commercial storefronts that “have a detrimental impact on the economic viability of the commercial corridors in which they are located...attract illegal activity, such as squatting, vandalism, and dumping...repels would-be customers and patrons from commercial corridors [and] places an undue burden on City agencies.”

- **How does it define a vacancy?**

“A building shall be defined as vacant or abandoned if it (1) is unoccupied and unsecured; or (2) is unoccupied and secured by boarding or other similar means; or (3) is unoccupied and unsafe as defined in Section 102A of this code; or (4) is unoccupied and has multiple code violations; or (5) has been unoccupied for over 30 days. A building which is partially unoccupied and has been cited for blight under Chapter 80 of the San Francisco Administrative Code, shall also be deemed a vacant or abandoned building that is subject to this section.”

“A building shall not be considered vacant or abandoned if (1) There is a valid building permit for repair, rehabilitation, or construction of a building on the parcel and the owner completes the repair, rehabilitation, or construction within one year from the date the initial permit was issued; or (2) The building complies with all codes, does not contribute to blight as defined in Chapter 80, is ready for occupancy, and is actively being offered for sale, lease, or rent. Satisfactory evidence shall include, but is not limited to, evidence that the owner has hired a real estate agent or other rental agent who advertises and promotes the Commercial Storefront for rent, lease or sale, or proof that the Commercial Storefront is offered for sale on the Multiple Listing Service or any other comparable real estate listing service.”

- **At what point must a vacancy be registered?**

Within 30 days after it has become vacant or abandoned. The registration fee shall be due 270 days after the Commercial Storefront has become vacant or abandoned.

- **How is the registration fee determined/structured?**

Initial and renewal registration fees are \$711 per storefront annually. No proration or refund of registration fee is allowed.

- **Under what conditions can an owner seek a waiver/exemption?**

Owner must provide proof of occupancy through submittal of the following:

- A copy of your most recent PG&E or gas and electric statement indicating property address
- A copy of your most recent Recology or garbage statement indicating property address
- A copy of your most recent PUC or water statement indicating property address
- A copy of your most current lease or rental agreement indicating property address

Exemptions up to one year are granted if an active permit has been issued for repairs/rehabilitations, and can be flexible if adequate proof of progress is provided.

- **How must the owner/property manager maintain a registered vacancy?**

“Property must be maintained and secured in compliance with Chapter 80 of the San Francisco Administrative Code, the California Environmental Quality Act, and all other applicable building, health, fire, and safety codes.”

“Maintain the building interior in a manner which prevents damage by the elements or from plumbing leaks, free from accumulation of garbage and other debris, and free from infestation from rodents, insects, and other pests.”

Maintain the exterior of the building and grounds in continual compliance with all applicable codes and regulations so as to prevent blight. This shall include the maintenance of landscaping and plant materials in good condition; the regular removal of trash debris and graffiti; a safe structure, which preserves physical integrity including paint and finishes, foundation, roof, chimneys, flues, gutters, downspouts, scuppers, flashing, skylights, windows, and exterior stairs and decks; prevention of criminal activity on premises and trespass by unauthorized persons; and the shut off of utilities not necessary for building maintenance.

Post a sign at the front of the storefront or a property in a conspicuous location protected from the weather that provides the current name, and phone number of the owner of record and authorized agent, if different from owner. If notice of default or foreclosure has been recorded for the property, the lender’s name, address, and telephone number must be provided. Signage shall be no smaller than 8 ½ by 11 inches.

- **What is the fine structure for failure to register and/or additional violations?**

If the owner fails to register within the first 30 days of vacancy, a final warning is issued, providing another 30 days to come into compliance. If the owner still fails to register, a hearing date is set, wherein the hearing officer either issues an abatement or lien on the property. Failure to register and pay the fee can result in a fine of \$6,399.

Washington, DC

Code of the District of Columbia, §42-3131.06 – §42-3131.18 – Registration of Vacant Buildings¹⁸

- **What has historically been the predominant cause of vacant spaces?**

Largely based on property speculation, such that the legislation, and subsequent amendments/bills. This in part explains why the DC ordinance reads as more punitive than other examples.

- **When was the ordinance enacted?**

2010, although it has undergone three major changes in the past three years to become more punitive, including an increase in maximum fine amounts, reducing the period during which owners can claim exemptions, and shifting the burden of proving properties are no longer vacant from DCRA¹⁹ to owners.

- **What has been the impact of the ordinance? Positives? Negatives?**

Overall, the ordinance has been described as “very effective” for both residential and commercial uses, especially when the property in question is subject to a new Class 3 Tax rate designation.

A 2017 audit alleged that between FY 2014-2015, there was “improper granting of exemptions, not following legal requirements, communication errors with OTR, and other problems that led to the District failing to collect almost \$1M in potential revenue across 31 surveyed properties.

- **What is the stated purpose of the ordinance?**

“To identify and account for unoccupied property which protects the health, safety and welfare of the general public. Vacant properties can be a cause and source of blight. Registering vacant property persuades the owner to come into compliance, especially when the owner fails to actively maintain, preserve and manage the property to ensure it does not become a nuisance to the community.”

- **How does it define a vacancy?**

“Any property that is unoccupied, properly registered, and meets the vacant property conditions will be cited and issued a vacant property sticker. Unregistered property may also be considered vacant if the property is unoccupied, NOT registered or subject to an exemption.”

In determining whether a building is vacant, DCRA must consider whether the building has:

- Low or no utilities usage;
- An accumulation of mail;
- A lack of furniture or window coverings;

¹⁸ See also: <https://code.dccouncil.us/dc/council/code/sections/42-3131.06.html#>

¹⁹ Department of Consumer and Regulatory Affairs

- Open accessibility;
- Deferred maintenance, including loose or falling gutters, severer paint chipping, or overgrown grass;
- Been the subject of neighbor complaints about the property; and
- Been boarded up

- **At what point must a vacancy be registered?**

Within 30 days after it becomes a vacant building. After notification of the property owner, DCRA will visit the property twice within a 45-day period to make a determination of vacancy.

- **How is the registration fee determined/structured?**

Initial and renewal registration fees are \$250 per storefront annually. When first developed, the ordinance required registration fees be set at \$20 for each 400 square feet of commercial space and employed a complex formula to determine renewal rates. It was simplified in 2010 to its present iteration.

In addition to the registration fee, a vacancy is subject to the “Fiscal Year 2011 Budget Support Act of 2010,” which created a Class 3 property tax rate for vacant commercial properties and a Class 4 tax rate for blighted properties. Once registered with DCRA, a vacant building is referred to the Office of Tax and Revenue and taxed at the Class 3 rate of \$5.00 per \$100 of assessed value. Blighted properties are also referred and taxed at the Class 4 rate of \$10.00 per \$100 of assessed value.²⁰

Washington, DC Office of Tax and Revenue Tax Class Schedule		
Class	Tax Rate per \$100	Description
1	\$0.85	Residential real property, including multifamily
2	\$1.65	Commercial and industrial real property, for the first \$3M of assessed value
	\$1.85	Commercial and industrial real property, for assessed value more than \$3M
3	\$5.00	Vacant real property
4	\$10.00	Blighted real property

- **Under what conditions can an owner seek a waiver/exemption?**

A vacant building shall not be included on the list if it is under active construction or undergoing active rehabilitation, renovation, or repair, and there is a building permit to make the building fit for occupancy that

²⁰ A separate tax structure for vacant or blighted properties is not permitted in the State of Massachusetts and so would not be an option at this time for the City of Cambridge.

was issued, renewed, or extended within 12 months of the required registration date or if the owner has been actively seeking in good faith to rent or sell it; provided that

- The time period for sale or rent shall not exceed two years from the initial listing, offer, or advertisement of sale or one year from the initial listing, offer, or advertisement to rent
- Any leased property exempt shall have a valid certificate of occupancy

Exemptions may be also granted in the following cases:

- In extraordinary circumstances and upon showing of substantial undue economic hardship, for a period not to exceed 12 months from the required registration date, subject to renewal on the basis of continuing extraordinary circumstances and substantial undue economic hardship.
- For a period not to exceed 24 months if the property is the subject of a probate proceeding or the title is the subject of litigation (not including a foreclosure)
- For a period not to exceed 12 months if the property is subject of a pending application for a necessary approval for development before the Zoning Board of Appeals, the Zoning Commission, the Commission on Fine Arts, the Historic Preservation Review Board, the Mayor's Agent for Historic Preservation, the Department of Public Works, or the National Capital Planning Commission

Cumulative time period for exemptions from registration and fee requirements shall not exceed 3 real property tax years

- **How must the owner/property manager maintain a registered vacancy?**

"(I) Doors, windows, areaways, and other openings are weather-tight and secured against entry by birds, vermin, and trespassers, and missing or broken doors, windows, and other openings are covered; (II) The exterior walls are free of holes, breaks, graffiti, and loose or rotting materials, and exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint; (III) All balconies, porches, canopies, marquees, signs, metal awnings, stairways, accessory and appurtenant structures, and similar features are safe and sound, and exposed metal and wood surfaces are protected from the elements by application of weather-coating materials, such as paint"

Vacant buildings are required to have a standardized green sticker sign setting forth the name of the owner of each unit and contact information. Exempt properties are also required to be labeled with a sticker, smaller in size.

- **What is the fine structure for failure to register and/or additional violations?**

Failure to register is punishable with a fine of \$2,000 per occurrence.

The Mayor may also impose additional fines for any infraction of the provisions of § 42-3131.06, § 42-3131.07, § 42-3131.08, § 42-3131.09, or § 42-3131.12, pursuant to Chapter 18 of Title 2.

Any fees or fines that remain unpaid shall be assessed as a tax against the real property containing the vacant building and shall constitute a lien against the real property containing the vacant building and the personal property of the owner.

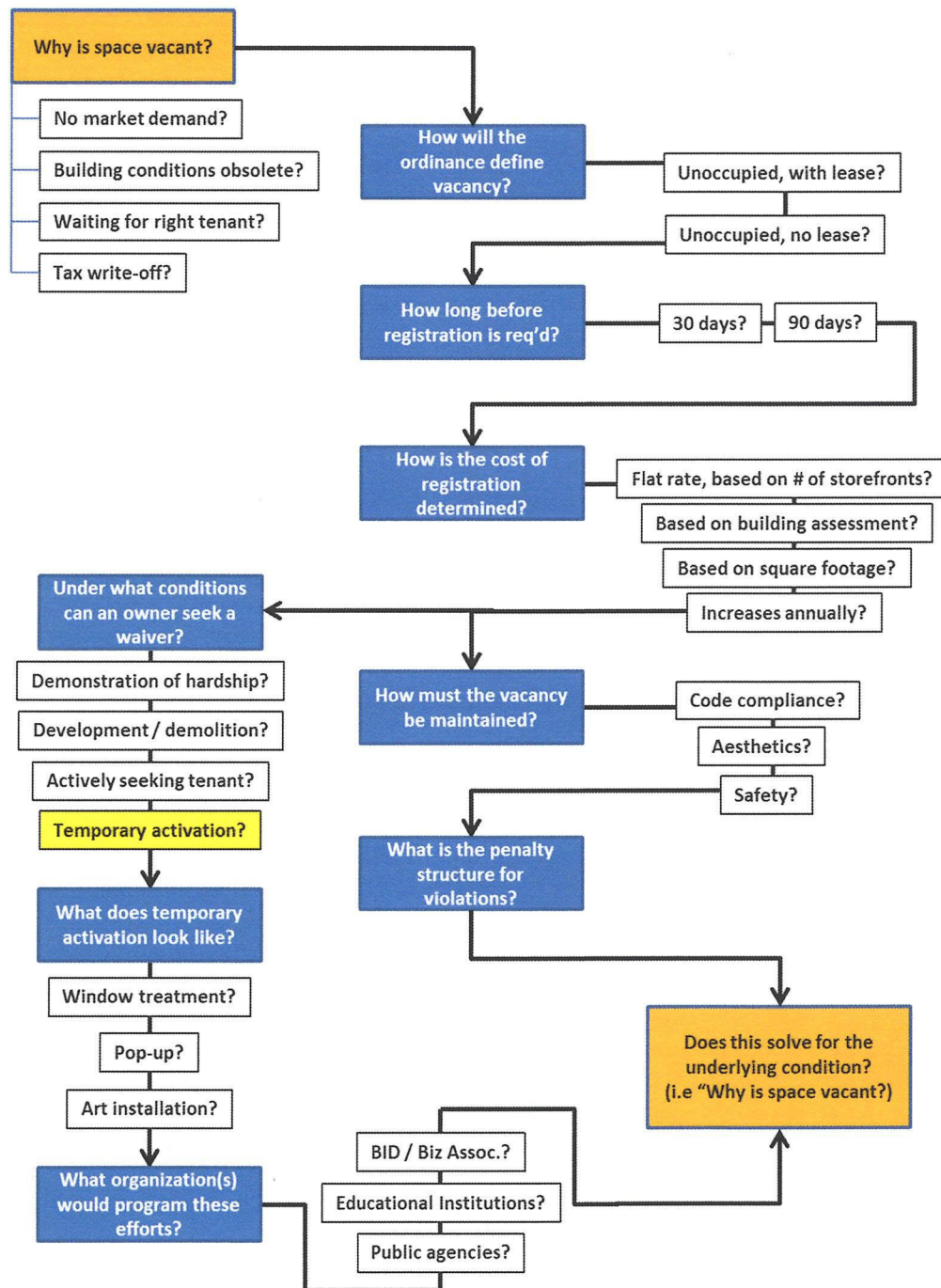
Conclusion

After conducting interviews with stakeholders, it was found that commercial vacancies in Cambridge do not seem to have a single underlying cause, but are a combination of both site-specific and district-level factors. This creates the impetus for good communication between property owners and the City for purposes of bringing vacancies back into an active state for the betterment of the larger community. Through improved communication, the underlying cause of a vacancy can be identified, whether it stems from a demonstration of economic hardship, a lack of marketing resources, articulated strategically curated tenanting strategy, or perhaps the natural churn of the retail market.

Additional investigation into the use of Vacant Property Registration Ordinances (VPROs) found that while the ability for a VPRO to create better dialogue with property owners was a consistent and desirable outcome, the overall impact on commercial vacancies and activation of underutilized space is much more nuanced.

Based on the findings contained within this report, it is recommended that the City of Cambridge consider an expansive toolkit of strategies that reflect its unique situation and are informed through active communication with property owners to ensure that the right tools are employed and successful outcomes achieved.

APPENDIX A - Vacancy Registry Flow Chart



APPENDIX B – Sources Consulted

Safeguard Properties

Comprehensive listing of Vacant Property Registration Ordinances in the United States

http://www.safeguardproperties.com/Resources/Vacant_Property_Registration/Default.aspx?filter=vpr

Arlington Vacant Storefront Registration Program

Department of Planning and Community Development

<https://www.arlingtonma.gov/departments/planning-community-development/economic-development/commercial-property-information>

781-316-3095

Lowell Vacant/Foreclosing Property Registration Program

Department of Development Services

<https://www.lowellma.gov/711/Register-a-Vacant-or-Foreclosing-Property>

978-674-1461

New Bedford Vacant Property Reporting Program

Neighborhood Task Force

<http://www.newbedford-ma.gov/taskforce/>

508-979-1417

San Francisco Vacant or Abandoned Buildings Program

Department of Building Inspection

<https://sfdbi.org/vacantstorefronts>

415-558-6196

Washington DC Vacant Building Enforcement Program

Department of Consumer and Regulatory Affairs

<https://dcra.dc.gov/vacant-properties>

202-442-4332