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Chapter 8.13 - ABANDONED AND DISTRESSED RESIDENTIAL PROPERTIES REGISTRATION

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8.13.010 - Purpose and findings.

It is the purpose and intent of the city council, through the adoption of this chapter, to establish an abandoned and distressed residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties and to establish uniform and reasonable regulations to prevent immediate risks and detrimental effects associated with abandoned and distressed properties.

The city council finds that abandoned and distressed residential properties pose risks to the public peace, health and safety of citizens in that the detrimental effects from the lack of security and maintenance of abandoned and distressed residential properties endangers children unprotected from unsecured pools and other attractive nuisances, leads to neighborhood decline, contributes to lower property values, discourages potential buyers from purchasing a home adjacent to or in the neighborhoods with abandoned and distressed residences, and further endangers neighborhoods affected by the resulting squatting, vandalism, burglaries and other crimes.

The city council further finds that the city will incur additional costs in administering and implementing the abandoned and distressed residential properties registration program and that it is in the best interests of the public for the city to recover the said costs through imposition of a registration fee.

(Ord. No. 707, § 1, 3-17-2009)

8.13.020 - Definitions.

The following terms and phrases, whenever used in this chapter, shall be construed as defined in this section:

A.

"Abandoned property" means a residential property that is vacant and is under a current notice of default and/or notice of trustee's sale, pending tax assessor's lien sale, or a residential property that has been the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure, or a residential property transferred under a deed in lieu of foreclosure/sale.

B.

"Accessible property" means an abandoned property, and any structure or building on the abandoned property, that is accessible through a compromised, breached or broken gate, fence, wall, window, door, and similar entry points and/or is unsecured in such way as to allow access to interior space by unauthorized person or trespasser.

C.

"Agreement of sale" means any agreement or written instrument which provides that title to residential property shall be transferred or conveyed from one owner to another owner after the sale, trade, transfer or exchange.

D.

"Beneficiary" means a lender under a note secured by a deed of trust. Beneficiary shall also include beneficiary's authorized agent, property management company or property manager.

E.

"Buyer" means any person, partnership, co-partnership, association, corporation, fiduciary or any entity that agrees to transfer anything of value in consideration for property described in the agreement of sale, as defined in this chapter.

F.

"Days" means consecutive calendar days.

G.

"Deed of trust" means an instrument, describing the real property and by which title to real property is transferred to a third party trustee as security for repayment of a real property loan or an obligation. This definition applies to any and all subsequent deeds of trust, including but not limited to second trust deed, third trust deed, etc.

H.

"Deed in lieu of foreclosure/sale" means a recorded document that transfers ownership of a property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust.

I.

"Default" means the failure to fulfill a contractual obligation, whether monetary or conditional.

J.

"Distressed property" means a residential property that is occupied by a person(s) having the right to use or having right of possession of the property and under a current notice of default and/or notice of trustee's sale or pending tax assessor's lien sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary or trustee via deed in lieu of foreclosure/sale.

K.

"Evidence of vacancy" means any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions include, but are not limited to, overgrown and/or dead vegetation, accumulation of newspapers, circulars, flyers and/or mail, past due utility notices and/or disconnected utilities, accumulation of trash, junk and/or debris, the absence of window coverings such as curtains, blinds and/or shutters, the absence of furnishings and/or personal items consistent with residential habitation, and/or statements, based on observations by neighbors, passersby, delivery agents, government employees that the property is vacant.

L.

"Foreclosure" means the process by which a property, placed as security for a real estate loan, is sold at an auction to satisfy the debt if the trustor (borrower) defaults.

M.

"Landscape" includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastics sheeting, mulch, indoor-outdoor carpet or any similar material.

N.

- "Landscape maintenance" includes, but is not limited to, regular watering, irrigation, cutting, pruning, mowing and removal of all trimmings of required landscape.
- O.**
- "Local" means within 40 road/driving miles distance of the abandoned or distressed property.
- P.**
- "Neighborhood standard" means those conditions that are present on a simple majority of properties within a 300-foot radius of a distressed or abandoned property. The abandoned or distressed property that is the subject of a neighborhood standard comparison, or any other abandoned property within the 300-foot radius, shall not be counted toward the simple majority.
- Q.**
- "Notice of default" means a recorded notice that a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee's sale.
- R.**
- "Out-of-area" means in excess of 40 road/driving miles distance of the subject property.
- S.**
- "Owner" means any person, partnership, co-partnership, association, corporation, fiduciary or any other legal entity having a legal or equitable title or any interest in the property.
- T.**
- "Owner of record" means the person, partnership, co-partnership, association, corporation, fiduciary or any other legal entity having recorded title to real property at any given point in time the record is provided by the Solano County Recorder's Office.
- U.**
- "Residential property" means any improved real property, or portion thereof, situated in the city, designed, built or permitted to be used for dwelling purposes, specifically including the buildings and structures located on such improved real property. This includes any real property being offered for sale, trade, transfer, or exchange as "residential" whether or not it is legally permitted or zoned for such use.
- V.**
- "Responsible person" shall also include beneficiary and trustee, as defined in this chapter.
- W.**
- "Secured" means treated with such measures as may be directed by city manager or his/her designee that assist in rendering the abandoned property inaccessible to unauthorized persons, squatters, trespassers, including, but not limited to, the closure, locking, pad-locking, chaining, repair and/or boarding of fence(s), wall(s), gate(s), window(s), door(s) (walk-through, sliding and/or garage), and/or other openings of such size that may allow a child access to the interior of the accessible property. In case of broken windows, secured includes the re-glazing or boarding of a window. Boarding shall be completed to a minimum of the current United States Department of Housing and Urban Development (HUD) securing standards at the time the boarding is completed or required, and shall additionally require painting the boards with an exterior grade paint that matches the color of the accessible property.
- X.**
- "Trustee" means the person, partnership, co-partnership, association, corporation, or fiduciary holding a deed of trust on a property. Trustee shall include any authorized agent, property management company or property manager of a trustee.
- Y.**
- "Trustor" means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.
- Z.**
- "Vacant" means a building/structure that is not legally occupied.

8.13.030 - Inspection, registration and fees.

A.

Inspection and Registration. Any beneficiary or trustee, who holds a deed of trust on a property located within the city, shall perform an inspection of the property that is the security for the deed of trust, upon default by the trustor and prior to recording a notice of default with the Solano County Recorder's Office.

1.

If the property is found to be vacant or shows evidence of vacancy, it is, by this chapter, deemed abandoned and the beneficiary or trustee shall, within ten days of the inspection or the date of vacancy, whichever is earliest, register the property with the city manager or his/her designee on forms provided by the city.

2.

If the property is occupied but remains in default, it shall be deemed distressed, and it shall be inspected by the beneficiary or trustee, every 15 days until either (1) the trustor or another party remedies the default; or (2) it is found to be vacant or shows evidence of vacancy, at which time it is deemed abandoned, and the trustee shall, within ten days of that inspection or the date of vacancy, register the property with the city manager or his/her designee on forms provided by the city.

B.

Contents of Registration. The registration required under this chapter shall contain: 1) the name of the beneficiary/trustee (co-partnership, partnership, association, fiduciary, corporation, any legal entity or an individual); 2) the direct street/office mailing address of the beneficiary/trustee, excluding P.O. boxes; 3) a direct contact name and phone number for the beneficiary/trustee; and 4) in the case of a corporation or out-of-area beneficiary/trustee, the local property management company responsible for the security, maintenance and marketing of the property. Any change of the information in the registration required under this paragraph shall be reported within ten days of the change.

C.

Registration Fee. The fee for registering an abandoned residential property shall be set by Resolution of the city council. An annual registration fee shall accompany the registration form. The imposed fees may not be passed on to other than the holder of the deed of trust. The abandoned residential properties registration fee will be used to finance the cost of inspection, administering and enforcement under this chapter. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations are due January 1st of each year and must be received no later than January 31st of the year due. Properties subject to this chapter shall remain under the annual registration requirement, security and maintenance standards of this chapter as long as the properties remain vacant.

D.

Out-of-Area Trustee/Beneficiary. An out-of-area beneficiary or trustee shall retain a local representative for the holder of the deed of trust, which shall inspect the property as required by this chapter to determine whether the abandoned property is in compliance with the requirements of this chapter.

E.

If any beneficiary or trustee fails to register the residential property, as required by this chapter, the city may register the residential property and impose the annual registration fee. Notice shall be provided pursuant to section 8.13.090 except that notice shall be provided to: 1) beneficiary or trustee, prior to completion of foreclosure or deed in lieu of foreclosure/sale transaction; or 2) to owner or owner of record after completion of foreclosure or deed in lieu of foreclosure sale transaction, as the address appears on the recent tax assessor's records or as known to the city manager or his/ her designee. The notice shall provide the amount due for the registration fee, shall state that the property has not been registered as required by this chapter and shall constitute enrollment in the city's abandoned residences registration program. The city may collect any unpaid registration fee by use of any method authorized by law.

(Ord. No. 707, § 1, 3-17-2009)

8.13.040 - Maintenance requirements.

Abandoned property shall be maintained in a manner comparable to the neighborhood standard. The property must be ready to be appraised and sold. At minimum:

- A. Abandoned property shall be maintained so as to be kept free of evidence of vacancy;
- B. Abandoned property shall be maintained free of weeds, dry brush, dead vegetation, trash, junk, debris and excessive foliage growth that diminishes the value of surrounding properties;
- C. Abandoned property shall be maintained free of mosquito larvae from growing in standing water;
- D. Abandoned property shall be maintained free of any building materials, any accumulation of newspapers, circulars, flyers, notices (except those required by federal, state or local law), discarded personal items, including but not limited to furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned;
- E. Abandoned property shall be maintained free of graffiti, tagging or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the structure, following a notice pursuant to section 8.13.090 or notice pursuant to California Civil Code Section 2929.3, whichever is applicable.
- F. Maintenance of abandoned properties shall include landscape maintenance of visible front and side yards; and
- G. Pools and spas shall either (a) be kept in working order so the water remains clear and free of pollutants and debris; or (b) drained and kept dry. In either case, properties with pools and/or spas must comply with the minimum security fencing requirements of the State of California.

Adherence to this section does not relieve the beneficiary/trustee or owner of any obligations set forth in any local, state or federal laws or any covenants, conditions and restrictions and/or homeowners' association rules and regulations which may apply to the property.

(Ord. No. 707, § 1, 3-17-2009)

8.13.050 - Security requirements.

Any abandoned property shall be secured, as defined in this chapter. In addition, the abandoned property shall be secured in a manner that would prevent trespassers, squatters or unauthorized persons from entering and/or remaining on the property.

(Ord. No. 707, § 1, 3-17-2009)

8.13.060 - Declaration of public nuisance.

Pursuant to the city's police powers authorized in Article XI, Section 7 of the California Constitution, as well as under the City Code and other provisions of California law, including, but not limited to, California Government Code Section 38771, the city council hereby declares that violation of this chapter, including but not limited to the maintenance and security requirements of this chapter shall constitute a public nuisance.

(Ord. No. 707, § 1, 3-17-2009)

8.13.070 - Additional authority.

In addition to any other remedies authorized by the City Code and/or any other enforcement remedies permitted under the law, the city manager or his/her designee shall have the authority to require the beneficiary/trustee/owner and/or owner of record of any property affected by this section to implement additional maintenance and/or security measures including but not limited to securing any and all door(s), window(s) or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard or other measures as may be reasonably required to arrest the decline of the property.

(Ord. No. 707, § 1, 3-17-2009)

8.13.080 - Notice of violation.

A.

Whenever the city manager, or his/her designee or enforcement officer finds that a provision of this chapter has been violated, he or she may issue the responsible person a notice of violation ("NOV"). If an NOV is issued, it shall be served on the responsible person in the manner described in subsection B. of this section. The enforcement officer shall include the following information in the NOV:

1. The date and location of the violation, including the address or other description of the location where the violation occurred or is occurring and a brief description of the conditions observed that constitute a violation;
2. The name(s) of the responsible person(s), if known;
3. The chapter section(s) violated and a description of the section(s);
4. Actions required to correct, abate or mitigate the nuisance condition or code violation, and a period of time during which action(s) shall be commenced and completed;
5. A statement that the person upon whom the NOV is served may appeal the determination that there is/are violation(s) as alleged, that the person who was served with the NOV is the responsible person, or that the amount of any administrative fine or civil penalty imposed is warranted. The NOV will instruct the person being served as to the proper procedure and time frame for submitting an appeal;
6. If applicable, notice that failure to correct or abate the listed violations in the NOV within the time specified will subject the responsible person to a civil penalty pursuant to section 8.13.100. If a penalty will be imposed, the NOV shall include the amount of the penalty; and
7. The signature of the citing enforcement officer and city contact information (address, telephone number) for additional information.

B.

The NOV shall be served upon the responsible person personally or by United States mail, first-class postage prepaid, and if by such mail, it shall be sent to the last known address listed on the most recent tax assessor's records or as known to the city manager or his/her designee. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of service by first-class mail, service shall be deemed complete at the time of deposit into the United States mail. Where service is by first-class mail, a copy of the NOV shall also be conspicuously posted at the affected property when reasonably practicable for a period of not less than three calendar days prior to the first date that commencement of corrective action or abatement is to be undertaken. The failure to receive an NOV sent via first-class mail shall not affect the validity of any enforcement proceedings under this chapter.

C.

Proof of service shall be certified by a written declaration under penalty of perjury executed by the person effecting service, declaring the date, time, and manner of service, and the date and place

of posting, if applicable. The declaration shall be affixed to a copy of the NOV and retained by the enforcement officer.

D.

The failure of an NOV to satisfy all of the requirements of this provision shall not affect the validity of any other enforcement proceedings under this Code.

(Ord. No. 707, § 1, 3-17-2009)

8.13.090 - Civil penalty imposed.

A.

Pursuant to California Civil Code Section 2929.3, the city, may impose a civil penalty in the amount not to exceed \$1,000.00 per day for failure to maintain and secure the abandoned property, as required by this chapter, provided that notice requirements of Civil Code Section 2929.3 are satisfied as follows:

1.

The city first issues a NOV, as provided in section 8.13.090, which also states that the city shall impose the civil penalty pursuant to this section if actions necessary to address the violation(s) at the abandoned property are not commenced within a period of not less than 14 days and completed within a period of not less than 30 days, from the date of mailing of NOV; and

2.

In addition to requirements of section 8.13.090, the NOV shall be mailed to the address provided in the deed of trust or other instrument specified in California Government Code Section 27321.5(a), or if none, to the return address provided on the deed or other instrument.

B.

The city shall not impose a civil penalty pursuant to this section together with administrative citations or fines authorized by chapter 8.12.

C.

The civil penalty imposed by this section shall stay in effect until January 1, 2013, the expiration date of Section 2929.3 of California Civil Code, unless extended by the state legislature.

D.

The civil penalty may not be passed on to other than the holder of the deed of trust.

(Ord. No. 707, § 1, 3-17-2009)

8.13.100 - Violation/penalty.

Violations of this chapter shall be treated as a strict liability offense regardless of intent.

(Ord. No. 707, § 1, 3-17-2009)

8.13.110 - Enforcement.

In addition to section 8.13.100, violations of this chapter may be enforced in any combination as permitted by the City Code and any other enforcement and legal remedies available to the city under the law. However, in no event shall the city impose a civil fine pursuant to section 8.13.100, together with administrative citations or fines authorized by chapter 1.20.

(Ord. No. 707, § 1, 3-17-2009)

8.13.120 - Appeals.

Any person aggrieved by any of the requirements of this section may appeal insofar as such appeal is permitted under the applicable sections of chapter 8.12. Any person aggrieved by the imposition

of a civil penalty pursuant to section 8.13.100, may appeal the penalty pursuant to procedures for an appeal of administrative citations, as provided in sections 1.20.070 through 1.20.110 of chapter 1.20.

(Ord. No. 707, § 1, 3-17-2009)
