

ORDINANCE NO. 4168

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA AMENDING CHAPTER 18 OF THE POMONA CITY CODE BY ADDING ARTICLE XII TO REQUIRE REGISTRATION, MAINTENANCE, AND SECURITY OF ABANDONED AND DISTRESSED PROPERTIES.

WHEREAS, the City Council has found and determined all of the following:

- (1) there has been an increased number of foreclosures occurring in the City of Pomona (the "City") as part of the housing downturn;
- (2) over the past few years, there has been an increased number of abandoned properties as a result of the increased foreclosure rate;
- (3) the presence of abandoned properties can lead to neighborhood blight and create attractive public nuisances;
- (4) the presence of abandoned properties can discourage potential buyers from purchasing a home adjacent to, or within neighborhoods with, abandoned residential properties;
- (5) many abandoned properties are often the responsibility of out-of-area or out-of-state lenders and trustees;
- (6) in many instances, the lenders and trustees fail to adequately maintain and secure these vacant, abandoned properties; and
- (7) the City Council desires to protect the City's neighborhoods from decline and devaluation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POMONA, as follows:

SECTION 1. That Pomona City Code, Chapter 18 ("Environment") is hereby amended as follows:

Article XII. Abandoned and Distressed Properties

- Sec. 18-700. Purpose.**
- Sec. 18-701. Definitions.**
- Sec. 18-702. Recordation of Transfer of Loan/Deed of Trust/Assignment of Rents.**
- Sec. 18-703. Registration Requirements.**
- Sec. 18-704. Management and Maintenance Requirements.**
- Sec. 18-705. Security Requirements.**
- Sec. 18-706. Additional Authority.**
- Sec. 18-707. Fees.**
- Sec. 18-708. Enforcement.**
- Sec. 18-709. Violations and Penalties.**
- Sec. 18-710. Other Remedies.**

Sec. 18-700. Purpose.

The purpose of this article is to establish an Abandoned Property Registration Program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties, and to require certain management and maintenance standards for Abandoned and Distressed Properties.

Sec. 18-701. Definitions.

The following definitions apply in this section:

- (a) “*Abandoned Property*” means real property that is vacant and either: (1) the subject of a current Notice of Default, (2) the subject of a current Notice of Trustee’s Sale, (3) the subject of a Tax Assessors Lien Sale, (4) the subject of a foreclosure sale where the title was retained by the beneficiary of a Deed of Trust involved in the foreclosure, (5) has been transferred under a Deed in Lieu of Foreclosure, or (6) has been surrendered or deserted in contemplation or threat of foreclosure.
- (b) “*Accessible*” means any real property or structure that is unsecured in such a way as to allow access to unauthorized persons.
- (c) “*Agreement for Sale*” means any agreement or written instrument that transfers or conveys title to real property from one person or entity to another person or entity.
- (d) “*Assignment of Rents*” means a written instrument that transfers the beneficial interest under a Deed of Trust from one person or entity to another person or entity.
- (e) “*Beneficiary*” means the beneficiary (either original beneficiary or the assignee) under a note secured by a Deed of Trust.
- (f) “*Buyer*” means any person who agrees to transfer anything of value in consideration for property described in an Agreement for Sale, as defined in this section.
- (g) “*City*” means the City of Pomona.
- (h) “*Code Compliance Manager*” shall mean the individual responsible for the day-to-day management of the Code Compliance Division or his/her designee.
- (i) “*Dangerous Building*” means any building or structure that is in violation of any condition referenced in the Uniform Code for Abatement of Dangerous Building, as adopted by Pomona City Code, Chapter 74.
- (j) “*Deed of Trust*” means any instrument, including any Deed of Trust or mortgage, by which legal title to real property, or any interest therein, is transferred to a trustee as security for a real estate loan, including, without limitation any and all subsequent deeds of trust, *i.e.*: 2nd trust deed, 3rd trust deed, etc.

(k) *“Deed in Lieu of Foreclosure”* means a document that transfers legal title to a property from the Trustor to the Trustee, upon consent of the Beneficiary of the Deed of Trust.

(l) *“Default”* means the failure to fulfill a contractual obligation, whether monetary or otherwise.

(m) *“Distressed Property”* means real property that is under a current Notice of Default 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 by way of a Deed in Lieu of Foreclosure, but which is lawfully occupied.

(n) *“Enforcement Officer”* shall mean any individual employed, or otherwise charged, by the City of Pomona to enforce codes, ordinances, mandates, regulations, or laws adopted by City Council or other regulatory bodies.

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

(p) *“Foreclosure”* means the process by which a property, placed as security for a loan, is sold to satisfy the debt if the Trustor defaults.

(q) *“Local”* means the area within forty (40) miles of the subject property.

(r) *“Neighborhood Standard”* means those conditions that are present on a simple majority of other occupied properties within a three hundred (300) foot radius of the subject property. A property that is the subject of a neighborhood standard comparison, or any other abandoned property, within the three hundred (300) foot radius, shall not be counted toward the simple majority.

(s) *“Notice of Default”* or *“Notice of Trustee’s Sale”* means a notice that a default has occurred under a Deed of Trust and that the Beneficiary intends to proceed with a trustee’s sale or other similar remedies authorized by law.

(t) *“Out of Area”* means the area in excess of forty (40) miles from the subject.

(u) *“Owner”* means any person having a legal title in any real property.

(v) *“Owner of record”* means the person or entity having recorded title to the property as shown in the Los Angeles County Registrar-Recorder’s Office.

(w) “*Property*” means any unimproved or improved real property, or portion thereof, situated in the City and includes the buildings or structures located on the property.

(x) “*Responsible Party*” means the person having actual control of the property at any given time, including the owner of record, the beneficiary, the trustee, the servicing company, or real estate agent acting, or any other party, acting on behalf of the owner of record, beneficiary, or trustee.

(y) “*Securing*” or its variants means such measures as may be directed by the Code Enforcement Manager or his or her designee that assist in rendering the property inaccessible to unauthorized persons, including, but not limited to, the repairing of fences and walls, chaining or pad-locking of gates, and the repair or boarding, of door, window or other openings to a minimum of the current HUD securing standards at the time the boarding is completed or required.

(z) “*Trustee*” means the person holding a Deed of Trust on a property.

(aa) “*Trustor*” means a borrower under a Deed of Trust, who deeds the legal title to a property over to a Trustee as security for the payment of a debt.

(bb) “*Vacant*” means a building or structure that is not legally occupied.

Sec. 18-702. Recordation of Transfer of Loan/Deed of Trust/Assignment of Rents.

Within ten (10) calendar days following the purchase or transfer of a loan or any Deed of Trust secured by Abandoned Property, the new Beneficiary and Trustee shall both record with the Los Angeles County Registrar-Recorder’s Office an Assignment of Rents that lists the names of the Beneficiary and Trustee and the mailing address and contact phone number of the new Beneficiary and Trustee responsible for receiving payments associated with the Deed of Trust.

Sec. 18-703. Registration Requirements.

(a) Any Beneficiary and Trustee under a Deed of Trust, or their designee, on Abandoned 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, prior to recording a Notice of Default with the Los Angeles County Registrar-Recorder’s Office. If the property is found to be Vacant or shows Evidence of Vacancy, the Beneficiary and Trustee shall, within ten (10) calendar days following the inspection, register the property with the Code Enforcement Manager on forms provided by the city. The Beneficiary and Trustee shall post a notice no less than 8.5” x 11” in size on the property indicating the most recent date and time of inspection. The notice shall be posted in a manner consistent with Section 18-705(c). A failure to perform such inspection or post a notice of inspection shall constitute a violation of this article.

(b) Any Distressed Property shall be inspected by the Beneficiary and Trustee, or their designee, at least monthly until either: (1) the Trustor or other 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 (10) calendar days following the required inspection, register the property with the Code Compliance Manager on forms provided by the city. The Beneficiary and Trustee shall post a notice no less than 8.5" x 11" in size on the property indicating the most recent date and time of inspection. The notice shall be updated each time an inspection of the property occurs, and shall be posted in a manner consistent with Section 18-705(c). A failure to perform such monthly inspections or post or update a notice of inspection shall constitute a violation of this article.

(c) The registration shall contain the names of the Beneficiary and Trustee, the street address of the Beneficiary and Trustee (no P.O. Boxes), a direct contact name, facsimile and phone numbers for the Beneficiary and Trustee and, in the case of an Out of Area Beneficiary or Trustee, the Local property management company responsible for the security, maintenance and marketing of the subject property.

(d) At the time of registration, the Beneficiary and Trustee shall concurrently file a Statement of Intent which will include: (1) the expected period of vacancy, (2) a plan for regular maintenance during the period of vacancy, and (3) a timeline for the lawful occupancy, rehabilitation or demolition of the subject property.

(e) An annual registration fee for the Beneficiary and Trustee shall accompany the registration form. Registration fees will not be prorated. 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 and fees are due January 1st of each year and must be received by the Code Compliance Manager no later than January 31st of the year due. The amount of the registration fee shall be set by resolution of the City Council.

(f) Anytime after the property is determined to be Vacant and if there are any changes to ownership, whether recorded or not, or if the loan is transferred to another Beneficiary, Trustee or Owner ("Responsible Party"), the Responsible Party shall re-register the property with the city. The re-registration must occur within ten (10) calendar days of the change. A re-registration fee will be assessed. The amount of the re-registration fee shall be set by resolution of the City Council.

(g) Abandoned Properties shall remain subject to the annual registration requirement and the security and maintenance standards of this article as long as they remain Abandoned.

(h) Any person or entity who has registered an Abandoned Property under this article must report in writing any change of information contained in the registration within ten (10) calendar days following the change.

Sec. 18-704. Management and Maintenance Requirements.

(a) The Beneficiary and Trustee of the subject property shall obtain a Local property management company that holds a valid and current City of Pomona business license to

inspect the property on a weekly basis to monitor the property for compliance with this Code.

(b) In addition to any other management and maintenance requirements in this Code (including, but not limited to Chapter 18 of this Code), Abandoned and/or Distressed Properties shall conform to the following standards:

(1) Abandoned and/or Distressed Properties shall be, in comparison to the Neighborhood Standard, kept free of: weeds, dry brush, dead vegetation, trash, junk, debris, 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, inoperable or abandoned vehicles, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned or distressed.

(2) Abandoned and/or Distressed Properties 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.

(3) Visible front and side yards shall be landscaped and maintained to the Neighborhood Standard existing at the time registration was required.

(i) Required landscaping includes, but is not limited to grass, ground covers, bushes, shrubs hedges or similar plantings, decorative rock or bark or artificial turf or so designed specifically designed for residential installation.

(ii) Required landscaping does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch, indoor outdoor carpet or any similar material.

(iii) Required maintenance includes, but is not limited to, compliance with Pomona City Code Chapter 18 and Pomona Zoning Code section .503-J(M), irrigation equipment that is operational at all times, an on-going water supply, regular watering, irrigation, cutting, pruning and mowing of required landscape and removal of all trimmings.

(4) Pools and spas shall be (i) kept in working order so the water remains clear and free of pollutants and debris to prevent pools and spas from becoming a breeding ground for mosquitoes and other vectors, or (ii) drained and kept dry. If pools and spas are kept in working order pursuant to subdivision (i) above, electrical service to the property must be maintained and on-going, and a failure to maintain electrical service in this scenario shall constitute a violation of this article. Under either subdivision (i) or (ii) above, properties with pools or spas must comply with the minimum security fencing requirements of the State of California.

(c) Adherence to this section does not relieve the Beneficiary, Trustee and Owner of any obligations set forth in this Code, any other code, law, Covenants Conditions and Restrictions, or any Homeowners Association rules and regulations that may apply to the property.

Sec. 18-705. Security Requirements.

(a) Abandoned and/or Distressed Properties shall be maintained in a secure manner so as not to be accessible by unauthorized persons. "Secure manner" includes, but is not limited to, the closure and locking of windows, doors (walk-through, sliding and garage) gates and any other opening of such size that it may allow a child to access the interior of the property and or structure(s). In the case of broken windows, "secure manner" means the re-glazing or boarding of the broken window. If the window is boarded-up on the exterior of the building, any boards used must be painted to match the existing color of the building.

(b) If any Abandoned Property is owned by a corporation or Out of Area Beneficiary, Trustee or Owner, a Local property management company that holds a valid and current City of Pomona business license shall be obtained to perform weekly inspections to verify that the requirements of this article, and any other applicable local or state laws, are being met.

(c) The Abandoned Property shall be posted with the name and a 24-hour contact phone number of the Local property management company. The posting shall be no less than 18" x 24" in size and shall be of a font that is legible from a distance of at least forty-five (45) feet and shall contain along with the name and 24-hour contact number, the words "THIS PROPERTY MANAGED BY _____ and TO REPORT PROBLEMS OR CONCERNS CALL _____." The posting shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building or structure facing the street to the front of the property so that it is visible from the street, or if no such area exists, on a stake of sufficient size to support the posting in a location that is visual from the street to the front of the property but not readily accessible to vandals or passers-by. All exterior postings must be constructed of, and printed with, weather resistant materials.

Sec. 18-706. Additional Authority.

In addition to all other enforcement remedies established in this Code, the Code Compliance Manager shall have the authority to require the Beneficiary, Trustee or Owner, or any combination thereof, to implement additional maintenance and security measures, including but not limited to, securing of any and all door, window 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 stop the decline of the Abandoned or Distressed Property.

Sec. 18-707. Fees.

The fees for registering or re-registering a property subject to this article shall be set from time to time by resolution of the City Council.

Sec. 18-708. Enforcement.

Violations of this article may be enforced as allowed in this Code or State law, including, but not limited to, the appointment of a receiver or an injunction in order to ensure compliance with this article.

Sec. 18-709. Violations and Penalties.

Violations of this article shall be treated as a strict liability offense regardless of intent. Any person that violates any portion of this article shall be subject to enforcement and fines as provided in this Code or as provided by State law.

Sec. 18-710. Other Remedies.

The rights and remedies provided in this article are cumulative and in addition to any other rights and remedies provided by law.

SECTION 2. The City Council finds that the changes made to Chapter 18 of the Pomona City Code are enacted to mitigate threats to public peace, health and safety and general welfare by enhancing the enforcement of laws relating to abandoned properties. Therefore, it can be seen with certainty that the adoption of this Ordinance will not have a significant adverse effect on the environment and is therefore exempt from the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines.

SECTION 3. If any part of this Ordinance, or its application to any individual, entity, or circumstance, is held to be invalid, the remainder of the Ordinance, including the application or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

SECTION 4. The City Clerk shall attest to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED THIS 19TH DAY OF NOVEMBER, 2012.

ATTEST:

CITY OF POMONA:

Marie Michel Macias, City Clerk

Elliott Rothman, Mayor

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, MARIE MICHEL MACIAS, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on September 24, 2012, and was adopted at second reading at a regular meeting of the City Council of the City of Pomona held on November 19, 2012, by the following vote:

AYES: COUNCILMEMBERS: Soto, Rodriguez, Carrizosa, Lantz, Escobar, Rothman
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: Atchley
ABSTAIN: COUNCILMEMBERS: None

Marie Michel Macias, City Clerk