

ORDINANCE NO. 3150

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
SECTION 15.60 OF THE CHULA VISTA MUNICIPAL CODE
REQUIRING THE REGISTRATION OF ABANDONED
RESIDENTIAL PROPERTIES

I. Recitals.

WHEREAS, the presence of vacant, abandoned residences can lead to neighborhood decline; and

WHEREAS, the presence of vacant, abandoned residences can create an attractive public nuisance; and

WHEREAS, the presence of vacant abandoned residences can contribute to lower property values; and

WHEREAS, the presence of vacant abandoned residences can discourage potential buyers from purchasing a home adjacent to or in neighborhoods with vacant abandoned residences; and

WHEREAS, many vacant abandoned residences are the responsibility of out of area, out of state lenders and beneficial interests; and

WHEREAS, in many instances the lenders and beneficial interests fail to adequately maintain and secure these vacant residences; and

WHEREAS, the city has an obligation to protect its residential neighborhoods from decline and devaluation; and

WHEREAS, on July 17, 2007, the City Council met, reviewed and discussed the proposed ordinance; and

WHEREAS, on August 7, 2007, the City Council passed Ordinance No. 3080.

NOW, THEREFORE, THE CITY COUNCIL of the City of Chula Vista does hereby ordain as follows:

Section I. That the proposed amendments to the Abandoned Residential Property Registration ordinance be enacted as follows:

15.60.010 PURPOSE/SCOPE

It is the purpose and intent of the Chula Vista City Council, through the adoption of this Chapter, to establish an abandoned 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.

Nothing in this ordinance shall be interpreted to allow or encourage circumvention of the foreclosure statutes of the State of California.

15.60.020 DEFINITIONS

For the purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

“Abandoned” means a property that is vacant and is under a current Notice of Default or Notice of Trustee’s Sale and is not currently being offered for sale, rent or lease by the Owner subject to such action(s), (Currently being offered for sale, rent or lease is evidenced by a sign posted on the subject property advertising the property for sale, rent or lease with contact information and current phone number and/or an active listing in an electronic database accessible to City staff.) and/or Property that has been the subject of a Foreclosure sale where the title was retained by the Beneficiary involved in the Foreclosure and any Property transferred under a Deed in Lieu of Foreclosure, whether or not it the Property is being marketed for sale, rent or lease.

“Accessible” means a Property or structure that unauthorized persons may gain access or entry to through a compromised/breached/unsecured gate, door, fence, wall, window, or other point of entry.

“Agreement” 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.

“Beneficiary” means a lender or other entity under a note secured by a Deed of Trust.

“Buyer” means any person, co-partnership, association, corporation, or fiduciary that agrees to transfer anything of value in consideration for Property described in an Agreement of sale.

“Days” means consecutive calendar days.

“Deed of Trust” means an instrument by which title to real estate is transferred to a third party Trustee as security for a real estate loan. Used in California instead of a mortgage, this definition applies to any and all subsequent Deeds of Trust i.e.: 2nd Trust Deed, 3rd Trust Deed, etc.

“Deed in Lieu of Foreclosure” means a recorded document that transfers Property from the Trustor to the holder of a Deed of Trust upon consent of the Beneficiary of the Deed of Trust.

“Default” means the failure to fulfill a contractual obligation, monetary or conditional.

“Distressed” means a Property that is under a current Notice of Default and/or Notice of Trustee’s Sale or there has been a foreclosure by the Trustee or has been conveyed to the Beneficiary/Trustee via a Deed in Lieu of Foreclosure.

“Evidence of Vacancy” means any condition visible from the exterior 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, statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

“Evidence of Occupancy” means any condition visible from the exterior that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is legally occupied. Such conditions include but are not limited to secured/locked structures, active utility services, the absence of overgrown and/or dead vegetation, the absence of an accumulation of newspapers, circulars, flyers and/or mail, the absence of an accumulation of trash, junk and/or debris, the presence of window coverings such as curtains, blinds and/or shutters, the presence of furnishings and/or personal items consistent with residential habitation, statements by neighbors, passersby, delivery agents, government employees that the property is legally occupied or actual contact with occupants.

“Field Service Provider” means an individual, entity or department that is responsible for inspecting, securing, and maintaining Abandoned Property.

“Foreclosure” means the process by which a Property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the Trustor (borrower) Defaults.

“Inspection” means a physical investigation at a Property to obtain Evidence of Occupancy or Vacancy and/or to verify compliance with this ordinance and any other applicable code or law. Although interior inspections may be allowed under a Deed of Trust they are not required by this ordinance.

“Neighborhood Standard” means those conditions that are present on a simple majority of 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.

“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.

“Owner” means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.

“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 regardless of condition.

“Property Preservation/Real Estate Owned (REO) section/department” means entity, group, section, department or the designee of a Beneficiary that is responsible for inspecting, securing and maintaining Abandoned and REO Property.

“Residential” means any Property, or portion thereof, situated in the city, designed or permitted to be used for dwelling purposes, and shall include all buildings and structures located on such Property. This includes any Property being offered for sale, trade, transfer, or exchange as “residential” whether or not it is legally permitted and/or zoned for such use.

“Responsible Party” means the Beneficiary that is pursuing Foreclosure of a Property subject to this ordinance secured by a mortgage, Deed of Trust or similar instrument or a Property that has been acquired by the Beneficial interest at Trustee’s Sale.

“Securing” means such measures as may be directed by the Director of Development Services or his or her designee so that the Property is not Accessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/padlocking of gates, the repair or boarding of door, window and/or other openings. Boarding shall be completed to a minimum of the current HUD securing standards at the time the boarding is completed or required. Locking includes measures that require a key, keycard, tool or special knowledge to open or gain access.

“Substitution of Beneficiary of Deed of Trust” means an instrument that transfers the beneficial interest under a Deed of Trust from one Beneficiary to another.

“Trustee” is the person, firm, entity, or corporation holding a Deed of Trust secured by the Property.

“Trustor” is a borrower under a Deed of Trust, who deeds property to a Trustee as security for the payment of a debt.

“Turf Stain” means the application of an environmentally safe stain or dye that colors dead/dormant vegetation green.

“Vacant” means a building/structure that is not legally occupied.

15.60.030 RECORDATION OF TRANSFER OF LOAN/DEED OF TRUST/ SUBSTITUTION OF BENEFICIARY OF DEED OF TRUST

Within ten (10) days of the purchase and/or transfer of a loan/Deed of Trust secured by residential Property the new Beneficiary shall record, with the San Diego County Recorders Office, a Substitution of Beneficiary of Deed of Trust, or similar document, that lists the name of the corporation, entity and/or individual, the mailing address and contact phone number of the new Beneficiary responsible for receiving payments associated with the loan/Deed of Trust.

15.60.040 REGISTRATION

Any Responsible Party/Beneficiary or their designee shall perform an inspection of the Property that is the security for the Deed of Trust, upon default by the Trustor, within ten (10) days of recording a Notice of Default with the San Diego County Recorders Office. If the property is found to be vacant or shows evidence of vacancy, it is, by this chapter, deemed abandoned and the Responsible Party/Beneficiary shall, within ten (10) days of the inspection, register the Property.

Registration may be accomplished by either of the following methods:

1. By completing and returning to the Director of Development Services Department or his/her designee a City provided registration form with required fee or
2. By registering with a City-approved national database that contains the information set out below and which service the City may access at no cost.

Nothing in this section shall prohibit the use of both methods of registration.

From time to time, the City Manager may approve an acceptable national database(s) which shall be identified in writing and which shall be posted in the Development Services Department and on the City's web-site.

If the Property is occupied but remains in Default it shall be inspected by the responsible party/Beneficiary, or their designee, monthly until 1) the trustor or another party remedies the Default; or 2) it is deemed Abandoned. The Responsible Party/Beneficiary or their designee shall, within ten (10) days of that inspection, register the Property as described above.

The registration shall contain the name of the Beneficiary/Responsible Party, the direct street/office mailing address of the Responsible Party/Beneficiary (no P. O. Boxes), a direct contact name and phone number for the Responsible Party/Beneficiary and the name, address and phone number of the property management company, Field Service Provider, Property Preservation or Real Estate Owned (REO) section/department responsible for inspecting, securing, maintaining the Property.

In the case of hard copy registration under 15.60.040 (1), initial registration fee shall accompany the registration form. The registration shall be valid for as long as the registered Property remains subject to this ordinance. Any changes to the information required on the registration shall be reported to the Director of Development Services Department or his/her designee in writing within ten (10) days of the change. The City is not responsible to verify the accuracy of the information provided.

This section shall also apply to Property that has been the subject of a Foreclosure where the title was transferred to the Beneficiary of a Deed of Trust involved in the Foreclosure and any Property transferred under a Deed in Lieu of Foreclosure.

Property subject to this chapter shall remain under the registration requirement, security and maintenance standards of this section as long as the Property remains Abandoned.

It is the obligation of the Responsible Party/Beneficiary/Owner to inform the City of any pending action, such as a bankruptcy, other court or administrative action that would prohibit the Responsible Party/Beneficiary/Owner from taking any of the actions required in this ordinance.

15.60.050 MAINTENANCE REQUIREMENTS

The exterior of the Property 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, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the Property is Abandoned.

The Property shall be maintained free of graffiti, tagging or similar markings by removal or painting over with an exterior grade paint that closely matches the color of the exterior of the structure.

Insofar as there is existing or previously existing landscaping, all visible front and side yards shall be maintained to the Neighborhood Standard at the time registration was required. If no landscaping previously existed at the property in front and visible side yards, installation is not required under this ordinance.

Landscape includes, but is not limited to, grass, turf stain, 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, plastic sheeting, mulch (unless applied in conjunction with reseeded of turf areas), indoor-outdoor carpet or any similar material.

Maintenance includes, but is not limited to, regular watering, irrigation, staining, re-staining, cutting, pruning and mowing of required landscaped and removal of all trimmings.

Pools and spas shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. In either case Property 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/Responsible Party of any obligations set forth in any Covenants, Conditions and Restrictions and/or Home Owners Association rules and regulations that may apply to the Property.

15.60.060 SECURITY REQUIREMENTS

Property subject to this section shall be maintained in a secure manner so as not to be Accessible to 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 openings of such size that leave it Accessible. In the case of broken windows securing means the reglazing or boarding of the window. Locking includes measures that require a key, keycard, tool or special knowledge to open or gain access.

The Responsible Party/Beneficiary or their designee shall perform monthly inspections to verify that the requirements of this ordinance are being met.

If the Responsible Party/Beneficiary does not have a Property Preservation or Real Estate Owned section/department a Field Service Provider or property manager shall be contracted to perform the inspection to verify that the requirements of this section, and any other applicable laws, are being met.

The property shall be posted with name and 24-hour toll-free contact phone number of the Beneficiary or Property Preservation, Real Estate Owned section/department, Field Service Provider or property manager. The posting shall be no less than 8 ½" X 11" and shall contain, along with the name and 24-hour toll free contact number, the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL" or similar. The posting shall be placed in a window adjacent to the entry door or attached to the exterior of the entry door. Exterior posting must be constructed of and printed with, or contained in, weather-resistant materials.

The Property Preservation/Real Estate Owned section/department, Field Service Provider, property manager or their designee shall inspect the Property on a monthly basis to determine if the Property is in compliance with the requirements of this ordinance.

15.60.070 ADDITIONAL AUTHORITY

In addition to the enforcement remedies established in Chapters 1.20, 1.30 and 1.41, the Director of Development Services or his or her designee shall have the authority to require the Responsible Party/Beneficiary of any Property affected by this section, to implement additional maintenance and/or security measures including but not limited to, securing any/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 arrest the decline of the Property.

15.60.080 FEES

The fee for registering an Abandoned Residential Property shall be set by resolution of the City Council.

15.60.90 ENFORCEMENT

Violations of this chapter may be enforced in any combination as allowed in Chapters 1.20, 1.30 and 1.41.

15.60.100 APPEALS

Any person aggrieved by any of the requirements of this section may appeal insofar as such appeal is allowed under Chapter 1.40.

15.60.110 VIOLATION/PENALTY

Violations of this chapter shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violate any portion of this section shall be subject to prosecution and/or administrative enforcement under Chapters 1.20 and 1.41.


15.60.120 SEVERABILITY

Should any provision, section, paragraph, sentence or word of this chapter be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this chapter shall remain in full force and effect.

Section II. Effective Date

This ordinance shall take effect and be in full force on the 30th day from and after its second reading.

Presented by



Gary Halbert, P.E., AICP
Deputy City Manager/Development Services
Director

Approved as to form by



Bart C. Miesfeld
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 2nd day of February 2010, by the following vote:

- AYES: Councilmembers: Bensoussan, Castaneda, Ramirez, and Cox
- NAYS: Councilmembers: None
- ABSENT: Councilmembers: None
- ABSTAIN: Councilmembers: Thompson



Cheryl Cox, Mayor

ATTEST:



Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3150 had its first reading at a regular meeting held on the 26th day of January 2010 and its second reading and adoption at a regular meeting of said City Council held on the 2nd day of February 2010; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

Executed this 2nd day of February 2010.



Donna R. Norris, CMC, City Clerk