



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-31

ROBERT E. SHANNON
City Attorney

December 14, 2010

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HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by adding Chapter 18.24 relating to a Foreclosure Registry Program read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

Pursuant to the request of the City Council at its meeting of September 7, 2010, this office has prepared the attached ordinance relating to a Foreclosure Registry Program. If adopted, the ordinance would establish a registration program that would allow the City the ability to better track and monitor distressed or vacant properties that are involved in a foreclosure process. The ordinance would also require owners of recently foreclosed upon properties to maintain those properties in such a manner that they not become a blight or nuisance to the community. Determinations made by the City relative to the requirement to maintain properties would be appealable to the City's Board of Examiners, Appeals and Condemnation.

The ordinance also establishes an alternative enforcement mechanism whereby the City could impose monetary penalties in particularly egregious property maintenance situations. Penalties would not be assessed until the City provides the property owner adequate notice and opportunity to cure the nuisance related conditions. Penalties of up to \$1,000.00 a day could be imposed in situations where the owner refuses to comply. Such penalties may be assessed in accordance with recently enacted State legislation adopted in an effort to insure that neighborhoods not become blighted as a result of foreclosure activity.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By

MICHAEL J. MAIS
Assistant City Attorney

MJM:kjm
A10-02328

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 18.24
RELATING TO FORECLOSURE REGISTRY PROGRAM

WHEREAS, the presence of vacant or abandoned real property can lead to neighborhood decline by creating an attractive public nuisance which could contribute to lower property values and could discourage potential buyers from purchasing a home adjacent to or in neighborhoods with vacant or abandoned residences; and

WHEREAS, many vacant or abandoned real properties are the responsibility of out of area, out of state, lenders and trustees, and in many instances the lender and/or trustees fail to adequately maintain and secure these vacant or abandoned residences; and

WHEREAS, the City has an obligation to preserve the health, safety and welfare of residents and the community, and to the extent possible, protect neighborhoods from declining property values, aesthetic decay, and/or loss of character.

NOW, THEREFORE, the City Council of the City of Long Beach ordains as follows:

Section 1. Chapter 18.24 is added to the Long Beach Municipal Code to read as follows:

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Chapter 18.24
Foreclosure Registry Program

18.24.010 Purpose.

It is the intent of the City Council, through the adoption of this Chapter, to establish a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of vacant or abandoned properties; to establish an abandoned property registration program and to set forth guidelines for the maintenance of abandoned properties.

18.24.020 Definitions.

Certain words and phrases in this Chapter are defined, when used herein, as follows:

Abandoned. Any building, structure or real property that is vacant or occupied by a person without a legal right of occupancy, and subject to a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Assessor's Lien Sale and/or any real property conveyed via a foreclosure sale resulting in the acquisition of title by an interested beneficiary of a deed of trust, and/or any real property conveyed via a deed in lieu of foreclosure sale.

Accessible Property. Real property that is accessible to the public, either in general, or through an open and unsecured door, window, gate, fence, wall, or the like.

Agreement. Any written instrument that transfers or conveys title to residential real property from one owner to another after a sale, trade, transfer or exchange.

Assignment of Rents. An instrument that transfers the beneficial interest under a deed of trust from one lender or entity to another.

1 Beneficiary. A lender participating in a real property transaction
2 that holds a secured interest in the real property in question identified in a
3 deed of trust.

4 Buyer. Any person, partnership, association, corporation, fiduciary
5 or other legal entity that agrees to transfer anything of value in
6 consideration for real property via an "agreement" as that term is defined
7 in this Section.

8 Dangerous Building. Any building or structure reasonably deemed
9 by qualified City staff to represent a violation of any provision specified in
10 the Long Beach Municipal Code Section 18.02.050.

11 Days. Calendar days.

12 Deed of Trust. An instrument whereby an owner of real property,
13 as trustor, transfers a secured interest in the real property in question to a
14 third party trustee, said instrument relating to a loan issued in the context
15 of a real property transaction. This definition applies to any and all
16 subordinate deeds of trusts including, but not limited to a second trust
17 deed or third trust deed.

18 Deed in Lieu of Foreclosure. A recorded instrument that transfers
19 ownership of real property between parties to a particular deed of trust as
20 follows – from the trustor (i.e, borrower), to the trustee upon consent of the
21 beneficiary (i.e., lender).

22 Default. The material breach of a legal or contractual duty arising
23 from or relating to a deed of trust, such as a trustor's failure to make
24 payment when due.

25 Distressed. Any building, structure or real property that is subject
26 to a current Notice of Default and/or Notice of Trustee's Sale, pending Tax
27 Assessors Lien Sale and/or any real property conveyed via a foreclosure
28 sale resulting in the acquisition of title by an interested beneficiary of a

1 deed of trust, and/or any real property conveyed via a deed in lieu of
2 foreclosure/sale, regardless of vacancy or occupancy by a person with no
3 legal right of occupancy.

4 Enforcement Official. The City Manager, the Director of
5 Development Services, and/or any employee or agency of the City of Long
6 Beach designated and/or charged with enforcing the Long Beach
7 Municipal Code, including but not limited to, applicable codes adopted by
8 reference therein.

9 Evidence of Vacancy. Any real property condition that
10 independently, or in the context of the totality of circumstances relevant to
11 that real property, would lead a reasonable enforcement official to believe
12 that a property is vacant or occupied by a person without a legal right of
13 occupancy. Such real property conditions include, but are not limited to:
14 overgrown or dead vegetation; accumulation of newspapers, circulars,
15 flyers or mail; past due utility notices or disconnected utilities;
16 accumulation of trash, junk or debris; the absence of window coverings
17 such as curtains, blinds or shutters; the absence of furnishings or personal
18 items consistent with residential habitation; and/or statements by
19 neighbors, passersby, delivery agents, or government employees that the
20 property is vacant.

21 Foreclosure. The process by which real property subject to a deed
22 of trust is sold to satisfy the debt of a defaulting trustor (i.e., borrower).

23 Local. Within forty (40) road or driving miles distance from the
24 subject building, structure or real property in question.

25 Neighborhood Standard. The condition of real property that
26 prevails in and through the neighborhood where an abandoned building,
27 structure or real property is located. When determining the neighborhood
28 standard no abandoned or distressed building, structure or real property

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shall be considered.

Notice of Default. A recorded instrument that reflects and provides notice that a default has taken place with respect to a deed of trust, and that a beneficiary intends to proceed with a trustee's sale.

Out of Area. In excess of forty (40) road or driving miles of the subject property.

Owner. Any person, partnership, association, corporation, fiduciary or other legal entity having recorded title to the property as reflected in the official records of the County Recorder of Los Angeles County.

Owner of Record. The person holding recorded title to the real property in question at any point in time when Official Records are produced by the Los Angeles County Registrar/Recorder's office.

Property. Any unimproved or improved real property, or portion thereof, situated in the City of Long Beach, including buildings or structures located on said real property, regardless of condition.

Residential Building. Any improved real property, or portion thereof, designed or permitted to be used for dwelling purposes, including buildings and structures located on such improved real property. This includes any real property being offered under any circumstances for sale, trade, transfer, or exchange as "residential," whether or not said property is legally permitted and zoned for such use.

Securing. Such measures as may be directed by a code enforcement official that assist in rendering real property inaccessible to unauthorized persons, including but not limited to repairing fences and walls, chaining/padlocking gates, the repairing or boarding of doors, windows or other such openings.

Trustee. Any person, partnership, association, corporation, fiduciary or other legal entity holding a deed of trust securing an interest in

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real property.

Trustor. Any owner/borrower identified in a deed of trust, who transfers an interest in real property to a trustee as security for payment of a debt by that owner/trustor.

Vacant. Any building, structure or real property that is unoccupied or occupied by a person without a legal right of occupancy.

18.24.030 Registration.

A. Each beneficiary and trustee who holds a deed of trust on a property located within the City of Long Beach, shall perform an inspection of the property in question prior to recording a Notice of Default or similar instrument with the Los Angeles County Registrar/Recorder's Office. If the property is found to be vacant or shows evidence of vacancy, as defined by this Chapter, it is hereby deemed to be abandoned.

B. Within thirty (30) days of identification of any vacant or abandoned property, the beneficiary and trustee must register the property with the City of Long Beach Development Services Department on specified forms.

C. If the property is occupied but distressed, the trustee and beneficiary or a designee shall inspect the property on a monthly basis until:

1. the trustor or another party remedies the default; or
2. the property is found to be vacant or shows evidence of vacancy, deemed abandoned and is rendered subject to the requirements set forth in Subsection 18.24.030.B.

D. The registration pursuant to Subsection 18.24.030.B shall contain the identity of the beneficiary and trustee, the direct mailing address of the beneficiary and trustee and, in the case of a corporate or out of area beneficiary or trustee, the local property management

1 company, if any, responsible for the security, maintenance and marketing
2 of the property in question.

3 E. The registration pursuant to Section 18.24.030.B shall be
4 renewed annually.

5 F. An annual registration fee as set by the City Council by
6 resolution shall accompany the submission of each registration form. The
7 fee and registration shall be valid for one (1) year from the date of
8 registration. Registration fees will not be prorated.

9 G. This Section shall also apply to properties that have been
10 the subject of a foreclosure sale wherein title has been transferred to the
11 beneficiary of a deed of trust involved in the foreclosure, and to any
12 properties transferred under a deed in lieu of foreclosure or sale.

13 H. Properties subject to this Chapter shall remain subject to the
14 annual registration requirement, security and maintenance standards of
15 this Chapter as long as they remain vacant.

16 I. Any person, partnership, association, corporation, fiduciary
17 or other legal entity that has registered a property under this Chapter must
18 make a written report to the City of Long Beach Development Services
19 Department of any change of information contained in the registration form
20 within ten (10) days of the change.

21 J. The duties/obligations specified in this Chapter shall be joint
22 and several among and between all trustees and beneficiaries and their
23 respective agents.

24 18.24.040 Maintenance required.

25 It is declared a public nuisance for any person, partnership,
26 association, corporation, fiduciary or other legal entity, that owns, leases,
27 occupies, controls or manages any property subject to the registration
28 requirement contained in Section 18.24.030.B, to cause, permit, or

1 maintain any property condition contrary to any provision of this Chapter.
2 Consequently, the following maintenance requirements as to any property
3 subject to the registration requirement contained in Section 18.24.030.B
4 are adopted:

5 A. Any property subject to this Chapter must comply with the
6 requirements of the Long Beach Municipal Code Chapter 18.20 entitled
7 "Unsafe Buildings or Structures."

8 B. In addition, the property shall be kept free of weeds, dry
9 brush, dead vegetation, trash, junk, debris, building materials, any
10 accumulation of newspaper, circular, flyers, notices (except those required
11 by federal, state or local law), discarded personal items including, but not
12 limited to, furniture, clothing, large and small appliances, printed material
13 or any other items that give the appearance that the property is
14 abandoned.

15 C. The property shall be maintained free of graffiti, tagging or
16 similar marking. Any removal or painting over of graffiti shall be with an
17 exterior grade paint that matches the color of the exterior of the structure.

18 D. Visible front and side yards shall be landscaped and
19 maintained to the neighborhood standard.

20 E. Landscaping includes, but is not limited to, grass, ground
21 covers, bushes, shrubs, hedges or similar plantings, decorative rock or
22 bark or artificial turf/sod designed specifically for residential installation.

23 F. Landscaping does not include weeds, gravel, broken
24 concrete, asphalt, plastic sheeting, mulch, indoor-outdoor carpet or any
25 other similar material.

26 G. Pools and spas shall be kept in working order so that water
27 remains clear and free of pollutants and debris, or alternatively shall be
28 drained and kept dry. In either case, properties with pools and/or spas

1 must comply with the minimum security fencing requirements of the State
2 of California.

3 H. Adherence to this Section does not relieve the
4 beneficiary/trustee or property owner of obligations set forth in any portion
5 of the Long Beach Municipal Code or in any Covenants, Conditions and
6 Restrictions and/or Home Owners Association rules and regulations which
7 may apply to the property.

8 The sole exception to these maintenance requirements shall, within
9 the sole reasonable discretion of the Director of Development Services or
10 designee, apply to property subject to the registration requirement
11 contained in Section 18.24.030.B that is under construction and/or repair,
12 not less than three (3) business days per week, undertaken in compliance
13 with all applicable laws, including but not limited to, City permitting
14 requirements.

15 18.24.050 Security requirements.

16 A. Properties subject to this Chapter shall be maintained in a
17 secure manner so as not to be accessible to unauthorized persons.

18 B. Secure manner includes, but is not limited to, closing and
19 locking of windows, doors (walk-through, sliding, and garage), gates and
20 any other opening that may allow access to the interior of the property
21 and/or structure(s). In the case of broken windows, "securing" means
22 reglazing or boarding the window.

23 C. If the property is owned by a corporation and/or out of area
24 beneficiary/trustee/owner, a local property management company shall be
25 contracted to perform weekly inspections to verify that the requirements of
26 this Section, and any other applicable laws, are being fulfilled.

27 D. The property shall be posted with the name and twenty-four
28 (24) hour contact phone number of the local property management

1 company. The posting shall be no less than 18" x 24", shall be of a font
2 that is legible from a distance of forty-five (45) feet, and shall contain the
3 following verbiage: "THIS PROPERTY MANAGED BY _____," and
4 "TO REPORT PROBLEMS OR CONCERNS CALL (name and phone
5 number)."

6 E. The posting shall be placed on the interior of a window
7 facing the street to the front of the property so it is visible from the street,
8 or secured to the exterior of the building/structure facing the street on the
9 front of the property so it is visible from the street. If no such area exists,
10 the posting shall be on a stake of sufficient size to support the posting, in a
11 location that is visible from the street to the front of the property, and to the
12 extent possible, not readily accessible to potential vandalism. Exterior
13 posting must be constructed of, and printed with weather resistant
14 materials.

15 F. The local property management company shall inspect the
16 property on a weekly basis to determine if the property is in compliance
17 with the requirement of this Chapter. If the property management
18 company determines the property is not in compliance, it is the company's
19 responsibility to bring the property into compliance.

20 G. The duties/obligations specified in this Chapter shall be joint
21 and several among and between all trustees and beneficiaries and their
22 respective agents.

23 18.24.060 Additional authority.

24 In addition to the enforcement remedies established in this Chapter,
25 the City shall have the authority to require the beneficiary, trustee, owner
26 or owner of record of any property affected by this Chapter, to implement
27 additional maintenance and/or security measures including, but not limited
28 to, securing any and all doors, windows or other openings, installing

1 additional security lighting, increasing on-site inspection frequency,
2 employment of an on-site security guard and/or other measures as may
3 be reasonably required to secure and reduce the visual decline of the
4 property.

5 18.24.070 Enforcement.

6 A. Any violation of this Chapter shall be treated as a strict
7 liability offense; a violation shall be deemed to have occurred regardless
8 of a violator's intent.

9 B. Any person, partnership, association, corporation, fiduciary
10 or other legal entity, that owns, leases, occupies, controls or manages any
11 property subject to the registration requirement contained in Section
12 18.24.030.B, and causes, permits, or maintains a violation of this Chapter
13 as to that property, shall be guilty of a misdemeanor, and upon conviction
14 thereof, shall be punished as provided in Chapter 1.32 of this Code.

15 C. This Chapter is intended to be cumulative to, and not in
16 place of, other rights and remedies available to the City pursuant to the
17 Long Beach Municipal Code. The City Attorney or a duly authorized
18 enforcement official may pursue any other right or remedy permitted by
19 the Long Beach Municipal Code, including, but not limited to,
20 commencement of any civil action, or administrative action to abate the
21 condition of a property as a public nuisance.

22 18.24.080 Appeals.

23 Any person aggrieved by any of the requirements of this Chapter
24 may appeal a determination made hereunder by filing a written notice of
25 appeal upon the Secretary of the Board of Examiners, Appeals and
26 Condemnation within thirty (30) days from receiving any written notice or
27 directive from any City enforcement official regarding property subject to
28 this Chapter and in accordance with the provisions of Chapter 18.10 of the

1 Long Beach Municipal Code.

2 18.24.090 Alternative monetary penalties.

3 A. This Section is intended to carry out the provisions of
4 California Civil Code Section 2929.3. Nothing in this Section shall be
5 interpreted or implemented in a manner that is inconsistent with state law.
6 If there is a conflict between the provisions of state law and this Section,
7 state law shall control.

8 B. The City may elect to impose monetary penalties on a legal
9 owner, pursuant to California Civil Code Section 2929.3, if that legal owner
10 fails to maintain vacant residential property that is either purchased at a
11 foreclosure sale or acquired through foreclosure under a mortgage or
12 deed of trust.

13 1. For purposes of this Section, "fails to maintain" means
14 failing to care for the exterior of the property, including, but not limited to,
15 permitting excess foliage growth that diminishes the value of surrounding
16 properties, failing to take action to prevent trespassers, squatters or other
17 unauthorized persons from remaining on the property, or failing to take
18 action to prevent mosquito larvae from growing in standing water, or other
19 conditions that create a public nuisance.

20 C. The City may impose a fine of up to one thousand dollars
21 (\$1,000.00) per day for each day that the legal owner fails to maintain the
22 property as required by this Section, commencing on the day following the
23 expiration of the period to remedy the violation, as established by the City
24 in Subsection D.

25 1. In determining the amount of the fine, the City shall
26 take into consideration any timely and good faith efforts by the legal owner
27 to remedy the violation.

28 2. Fines and penalties collected pursuant to this Section

1 shall be directed toward local nuisance abatement programs.

2 3. Pursuant to Section 2929.3 of the California Civil
3 Code, the City may not impose fines on a legal owner under both this
4 Section and any other local ordinance. However, Section 2929.3 of the
5 California Civil Code shall not preempt any local ordinance.

6 4. Notwithstanding Subsection C.3, the rights and
7 remedies provided in this Section are cumulative and in addition to any
8 other rights and remedies provided by law.

9 D. If the City imposes a fine pursuant to this Section, the City
10 shall give notice of the alleged violation to the legal owner. The notice
11 shall include a description of the conditions that gave rise to the alleged
12 violation, and state the City's intent to assess a civil fine if action to correct
13 the violation is not commenced within a period of not less than fourteen
14 (14) days and completed within a period of not less than thirty (30) days.

15 1. The notice shall be mailed to the address provided in
16 the deed or other instrument as specified in subdivision (a) of Section
17 27321.5 of the Government Code, or, if none, to the return address
18 provided on the deed or other instrument.

19 2. The City may provide less than thirty (30) days' notice
20 to remedy a condition, if the City determines that a specific condition of the
21 property threatens public health or safety and the notice of violation states
22 that there is a threat to public health or safety and lists the required time to
23 correct the violation.

24 18.24.100 Severability.

25 If any section or provision of this Chapter is for any reason held to
26 be invalid or unconstitutional by any court of competent jurisdiction, or
27 contravened by reason of any preemptive legislation, the remaining
28 sections and/or provisions of this Chapter shall remain valid. The City

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Council hereby declares that it would have adopted this Chapter, and
2 each section or provision thereof, regardless of the fact that any one or
3 more section(s) or provision(s) may be declared invalid or unconstitutional
4 or contravened via legislation.
5

6 Section 2. The City Clerk shall certify to the passage of this ordinance by
7 the City Council and cause it to be posted in three (3) conspicuous places in the City of
8 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
9 Mayor.

10 I hereby certify that the foregoing ordinance was adopted by the City Council of
11 the City of Long Beach at its meeting of _____, 20__, by the following vote:

12 Ayes: Councilmembers: _____

13 _____

14 _____

15 _____

16 Noes: Councilmembers: _____

17 _____

18 Absent: Councilmembers: _____

19 _____

20 _____

21 _____

22 _____
City Clerk

23 _____

24 _____

25 Approved: _____
(Date) Mayor

26 _____

27 _____

28 _____