

ORDINANCE NO. 23-2009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ENACTING ELK GROVE MUNICIPAL CODE CHAPTER 16.17 ENTITLED ABANDONED RESIDENTIAL PROPERTY REGISTRATION

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority

Under California Constitution Article XI, Section 7, the City of Elk Grove may enact ordinances to preserve and protect the public safety, health, and welfare. To this end, the City Council of the City of Elk Grove has amended Title 16 of the Municipal Code regarding Buildings and Construction to add Chapter 16.17 "Abandoned Residential Property Registration".

Section 2: Enactment of New Elk Grove Municipal Code Chapter 16.17

A new Chapter 16.17 is hereby enacted and added to the Elk Grove Municipal Code to read as follows:

Chapter 16.17 ABANDONED RESIDENTIAL PROPERTY REGISTRATION

Article I. Purpose, Scope and Definitions

16.17.100 Purpose/Scope

It is the purpose and intent of the 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.

16.17.200 Definitions

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

A. "A" Definitions.

1. "Abandoned" means a property that is vacant and is under a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Assessors Lien Sale and/or properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.
2. "Accessible property" means a property that is accessible through a compromised/breached gate, fence, wall etc.

3. "Accessible structure" means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.
4. "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.
5. "Assignment of Rents" means an instrument that transfers the beneficial interest under a deed of trust from one lender/entity to another.

B. "B" Definitions.

1. "Beneficiary" means a lender under a note secured by a deed of trust.
2. "Buyer" means any person, co-partnership, association, corporation, or fiduciary who agrees to transfer anything of value in consideration for property described in an agreement of sale, as defined in this subsection.

C. Reserved for future use.

D. "D" Definitions.

1. "Dangerous building" means any building/structure that is violation of any condition referenced in EGMC Chapter 16.22.
2. "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. This definition applies to any and all subsequent deeds of trust i.e.: 2nd trust deed, 3rd trust deed, etc. "Deed of Trust" also includes "mortgage".
3. "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.
4. "Default" means the failure to fulfill a contractual obligation, monetary or conditional.
5. "Distressed" means a property that is under a current Notice of Default and/or Notice of Trustee's Sale and/or pending Tax Assessor's Lien Sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary/trustee via a Deed in lieu of Foreclosure/sale.

E. "E" Definitions.

1. "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, statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

- F. "F" Definitions.
 - 1. "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.
- G. Reserved for future use.
- H. Reserved for future use.
- I. Reserved for future use.
- J. Reserved for future use.
- K. Reserved for future use.
- L. "L" Definitions.
 - 1. "Local" means within forty (40) road/driving miles distance of the subject property.
- M. Reserved for future use.
- N. "N" Definitions.
 - 1. "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.
- O. "O" Definitions.
 - 1. "Out of area" means in excess of forty (40) road/driving miles distance of the subject property.
 - 2. "Owner" means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.
 - 3. "Owner of record" means the person having recorded title to the property at any given point in time the record is provided by the Sacramento County Recorders Office.
- P. "P" Definitions.
 - 1. "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.
- Q. Reserved for future use.
- R. "R" Definitions.
 - 1. "Residential building" means any improved real property, or portion thereof, situated in the city, designed or permitted to be used for dwelling purposes, and shall include 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 and/or zoned for such use.

S. "S" Definitions.

1. "Securing" means such measures as may be directed by the Community Enhancement Manager or designee that assist in rendering the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/pad locking of gates, the repair or boarding of door, window and/or other openings. 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.

T. "T" Definitions.

1. "Trustee" means the person, firm or corporation holding a Deed of Trust on a property.
2. "Trustor" means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

U. Reserved for future use.

V. "V" Definitions.

1. "Vacant" means a building/structure that is not legally occupied.

W. Reserved for future use.

X. Reserved for future use.

Y. Reserved for future use.

Z. Reserved for future use.

Article II. Registration Required

16.17.300 Recordation of Transfer of Loan/Deed of Trust/Assignment of Rents

Within ten (10) days of the purchase and/or transfer of a loan/deed of trust secured by residential property the new beneficiary/trustee shall record, with the Sacramento County Recorder's Office, an Assignment of Rents, or similar document, that lists the name, the mailing address and contact phone number of the new beneficiary/trustee responsible for receiving payments associated with the loan/deed of trust.

16.17.400 Registration

A. Upon default of the trustor and prior to the recording of a Notice of Default with the Sacramento County Recorder's Office any beneficiary/trustee, who holds a deed of trust on a property located within the City of Elk Grove, shall perform an inspection of the

property that is the security for the deed of trust. If the property is found to be vacant or shows evidence of vacancy, it is, by this Chapter, deemed abandoned and the beneficiary/trustee shall, within ten (10) days of the inspection, register the property with the City Manager or his or her designee on forms provided by the City.

B. If the property is occupied but remains in default, the beneficiary/trustee shall, at least one (1) time per month, inspect the property. This obligation to inspect shall continue until: 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) days of that inspection, register the property with the City Manager or designee on forms provided by the City.

In either case the registration shall contain the name of the beneficiary/trustee, the direct street/office mailing address of the beneficiary/ trustee (no P. O. Boxes), a direct contact name and phone number for the beneficiary/trustee and, if applicable, the local property management company responsible for the security, maintenance and marketing of the property. Registration fees will not be prorated.

An annual registration fee shall accompany the registration form. 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 no later than January 31st of the year due. The annual registration fee shall be set per EGMC Section 16.17.800.

This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a deed of trust involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

Properties subject to this Chapter shall remain under the annual registration requirement, security and maintenance standards of this section as long as they remain vacant.

C. Properties currently represented by a real estate agent, having a sign posted on the property with contact information for the agent are exempt from the requirements of this Chapter.

D. Any person, firm or corporation that has registered a property under this Chapter must report any change of information contained in the registration within ten (10) days of the change. By reporting that the property is no longer vacant, and an inspection by Community Enhancement staff confirming that report, the property will be removed from the registry.

16.17.500 Maintenance Requirements

A. Properties subject to this section shall be 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.

B. The 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.

C. Visible front and side yards shall be landscaped and maintained to the EGMC standard at the time registration was required.

D. 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.

E. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch, indoor-outdoor carpet or any similar material.

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

G. 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 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 property owner of any obligations set forth in any Covenants Conditions and Restrictions and/or Home Owners Association rules and regulations which may apply to the property.

16.17.600 Security Requirements

Properties 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 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 securing means the reglazing or boarding of the window.

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

The property shall be posted with name and twenty-four (24) hour contact phone number of the local property management company. The posting shall be no less than

eighteen by twenty-four (18" X 24") inches and shall be of a font that is legible from a distance of forty-five (45 ' 00") feet and shall contain along with the name and twenty-four (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 it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so 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. Exterior posting must be constructed of and printed with weather resistant materials.

The local property management company shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this Chapter.

16.17.700 Additional Authority

In addition to the enforcement remedies established in EGMC Chapters 1.12 and 16.18 the City Manager or 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/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.

16.17.800 Fees

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

16.17.900 Enforcement

Violations of this Chapter constitute a public nuisance and may be enforced in any combination as allowed in EGMC Chapters 1.12 and 16.18 as a public nuisance.

16.17.1000 Appeals

Any person aggrieved by any of the requirements of this section may appeal insofar as such appeal is allowed under EGMC Chapters 1.11 for Administrative Citations and 16.18.1300 for Notice and Orders.

16.17.1100 Violation/Penalty

Violations of this Chapter shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violates any portion of this section shall be subject to prosecution and/or administrative enforcement under EGMC Chapters 1.12 and 16.18

Section 3: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care

towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4: Severability.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

Section 5: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: **23-2009**
INTRODUCED: December 9, 2009
ADOPTED: February 10, 2010
EFFECTIVE: March 12, 2010



SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



SUSAN J. BLACKSTON, CITY CLERK



SUSAN COCHRAN, CITY ATTORNEY

Date signed: February 17, 2010

CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 23-2009

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on December 9, 2009 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 10, 2010 by the following vote:


AYES : **COUNCILMEMBERS:** *Scherman, Detrick, Davis, Hume*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *Cooper*

ABSENT: **COUNCILMEMBERS:** *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).


Susan J. Blackston, City Clerk
City of Elk Grove, California