

ORDINANCE NO. 13-O6

AN ORDINANCE OF THE CITY OF AZUSA, CALIFORNIA, AMENDING CHAPTER 14, ADDING ARTICLE XVII, SECTIONS 14-456 TO 14-466, PERTAINING TO THE REGISTRATION AND MAINTENANCE OF VACANT AND ABANDONED PROPERTIES

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

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

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

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

WHEREAS, many vacant abandoned real properties are the responsibility of out of area, out of state lenders and trustees; and

WHEREAS, in many instances the lender and trustees fail to adequately maintain and secure these vacant 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 loss of character.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AZUSA DOES ORDAIN AS FOLLOWS:

Section 1: Article XVII is hereby added to Chapter 14 of the Azusa Municipal Code to read as follows:

“Article XVII. Registration and Maintenance of Abandoned Properties

Sections:

Sec. 14-456	Purpose
Sec. 14-457	Definitions
Sec. 14-458	Duty to Record Assignment of Rents
Sec. 14-459	Registration
Sec. 14-460	Maintenance Requirements
Sec. 14-461	Security Requirements
Sec. 14-462	Local Property Management Company

Sec. 14-463	Additional Requirements
Sec. 14-464	Enforcement
Sec. 14-465	Joint and Several Liability
Sec. 14-466	Appeals
Sec. 14-456	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 maintenance and security of abandoned properties; to establish an abandoned property registration program and to set forth guidelines for the maintenance of abandoned properties.

Sec. 14-457 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 Collector 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, etc.

ACCESSIBLE STRUCTURE. A building or structure that is not secured or is open in such a way as to allow public or unauthorized access to the interior.

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.

BENEFICIARY. A lender participating in a real property transaction that holds a secured interest in the real property in question identified in a deed of trust.

DAYS. Calendar days.

DEED OF TRUST. An instrument whereby an owner of real property, as trustor, transfers a secured interest in the real property in question to a third party trustee, said instrument relating to a loan issued in the context of a real property transaction. This definition applies to any and all subordinate deeds of trust i.e., 2nd trust deed, 3rd trust deed, etc.

DEED IN LIEU OF FORECLOSURE. A recorded instrument that transfers ownership of real property between parties to a particular deed of trust as follows - from the trustor, i.e., borrower, to the trustee upon consent of the beneficiary, i.e., lender.

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

DISTRESSED. Any building, structure or real property that is subject to a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Collector Lien Sale, foreclosure action, 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, regardless of vacancy or occupancy by a person with no legal right of occupancy.

ENFORCEMENT OFFICIAL. The City Manager, or Compliance Officer, as defined in Section 2-131, and/or any employee or agent of the City of Azusa designated or charged with enforcing the Azusa Municipal Code, including but not limited to applicable codes adopted by reference.

EVIDENCE OF VACANCY. Any real property condition that independently, or in the context of the totality of circumstances relevant to that real property would lead a reasonable enforcement official to believe that a property is vacant or occupied by a person without a legal right of occupancy. Such real property 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, passersby, delivery agents, government employees that the property is vacant.

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

LOCAL. Within forty (40) road/driving miles of the subject property.

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 a legal or equitable title or any interest in real property.

OWNER OF RECORD. The person or entity holding recorded title to the real property in question at any point in time when Official Records are produced by the Los Angeles County Recorder's Office or any private real estate information vendor.

PROPERTY. Any unimproved or improved real property, or portion thereof, including but not limited to buildings or structures located on said real property, regardless of condition.

SECURING. Such measures as may be directed by an enforcement official that assist in rendering real property inaccessible to unauthorized persons, including but not limited to repairing fences and walls, chaining/pad locking gates, repairing or boarding doors, windows or other openings, and as otherwise required by this Code and other laws.

TRUSTEE. Any person, partnership, association, corporation, fiduciary or other legal entity holding a Deed of Trust securing an interest in 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.

Sec. 14-458 DUTY TO RECORD TRANSFER OF LOAN AND/OR DEED OF TRUST AND/OR ASSIGNMENT OF RENTS

Within ten (10) days of a property transaction involving a change in the identity of an owner or the owner of record, or alternatively a transfer/assignment of a loan or deed of trust secured by property, or an assignment of rents, each beneficiary and trustee engaged in said transaction or transfer/assignment shall record, with the Los Angeles County Recorder's Office, an Assignment of Rents, or similar instrument. This instrument shall list name of the corporation or other entity or individual, the mailing address and telephone number of the trustee and beneficiary responsible for receiving payments associated with the loan or deed of trust. This duty/obligation shall be joint and several among and between all trustees and beneficiaries and their respective agents.

Sec. 14-459 REGISTRATION

- (A) Within fifteen (15) days of recording a Notice of Default, the beneficiary and trustee shall register the property with the Azusa Economic and Community Development Department. If the beneficiary or trustee has recorded a Notice of Default prior to the effective date of this ordinance, they shall register such property with the Azusa Economic and Community Development Department within fifteen (15) days of the effective date of this ordinance.
- (B) Each beneficiary and trustee, who holds or has an interest in a deed of trust on a distressed property located within the City of Azusa, shall perform an inspection of the property in question prior to recording a Notice of Default or similar instrument with the Los Angeles County Recorder's Office.
- (C) If the property is occupied, but distressed, the trustee and beneficiary or a designee shall inspect the property on a monthly basis until the trustor or another party remedies the default to the satisfaction of the Director of Economic and Community Development.

- (D) Regardless of whether the distressed property is occupied or unoccupied, the beneficiary, trustee, owner and any other entity or person that holds an interest in the subject property, as well as the local property management company must comply with the requirements of this chapter.
- (E) The registration required by this chapter shall contain the legal name of the beneficiary and trustee, a direct contact person, the direct mailing address of the beneficiary and trustee (excluding P.O. boxes), the phone numbers and email address of the beneficiary and trustee, and in the case of a corporate or an out of area beneficiary or trustee, the local property management company responsible for the security, maintenance and marketing of the property in question. A recorded copy of the most recent deed shall be attached and incorporated into the registration.
- (F) In order to ensure the City has the ability to properly maintain the property in the event of noncompliance with this chapter, the registration form shall also state that registration of the property constitutes a grant of authority to the City to cause utilities to the property to be turned on or off, as may be necessary. This does not relieve the duty of the beneficiary, trustee, owner and any other entity or person that holds an interest in the subject property, as well as the local property management company to comply with the obligations set forth in this chapter.
- (G) An annual registration fee, as set from time to time by Resolution of the City Council, shall be paid upon registration. The fee and registration shall be valid for one (1) year from the date of registration. Registration fees will not be prorated.
- (H) *Reserved.*
- (I) This section shall also apply to properties that have been the subject of a foreclosure sale wherein title has been transferred to the beneficiary of a deed of trust involved in the foreclosure, and to any properties transferred under a deed in lieu of foreclosure or sale.
- (J) Properties subject to this chapter shall remain subject to the annual registration requirement, security and maintenance standards of this chapter as long as they remain vacant or otherwise distressed.
- (K) Any person, partnership, association, corporation, fiduciary or other legal entity that has registered a property under this chapter must make a written report to the Azusa Economic and Community Development Department of any change of information contained in the registration within ten (10) days of the change.

Sec. 14-460

MAINTENANCE REQUIREMENTS

It is declared a public nuisance for any person, partnership, association, corporation, fiduciary or other legal entity, that owns, leases, occupies, controls or manages, or is beneficiary or trustee of any property subject to the to the registration requirement contained in this chapter,

to cause, permit, or maintain any property condition contrary to any provision of this chapter. Violation of this chapter constitutes a public nuisance that may be abated by any means provided in this Code. Any distressed, abandoned or property otherwise subject to the registration requirement in this chapter must be in compliance with the following maintenance requirements.

- (A) *Reserved.*
- (B) The property shall be kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper, circular, flyers, notices (except those required by 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, vacant or otherwise distressed.
- (C) The property shall be maintained free of graffiti, tagging or similar marking. Any removal or painting over of graffiti shall be with an exterior grade paint that matches the color of the exterior of the structure. The City may elect to take action to remove the graffiti as provided in Chapter 46-234 or may summarily abate this nuisance.
- (D) Visible front and side yards shall be landscaped and properly maintained, and any dead or overgrown vegetation shall be removed.
- (E) Landscaping 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, and in conformance with this Code.
- (F) *Reserved.*
- (G) Adherence to this section does not relieve the beneficiary/trustee or property owner of obligations set forth in any Covenants Conditions and Restrictions and/or Homeowners Association rules and regulations that may apply to the property.
- (H) The beneficiary and trustee shall ensure the utilities to the property are not terminated if the property is lawfully occupied.
- (I) *Reserved.*
- (J) Violation of any provision of this Chapter shall constitute a public nuisance, and may be abated by any means authorized by this Code or state law.

An enforcement official may allow exceptions to the maintenance standards set forth in this section for abandoned property that is under construction and/or repair that is diligently pursued for at least three (3) business days per week and is undertaken in compliance with all applicable laws including, but not limited to, City permitting requirements.

Sec. 14-461 SECURITY REQUIREMENTS

- (A) Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- (B) Secure manner includes but is not limited to closing and locking of windows, doors (walk-through, sliding and garage) gates and any other opening that may allow access to the interior of the property and or structure(s). In the case of broken windows securing means re-glazing or boarding the window.

Sec. 14-462 LOCAL PROPERTY MANAGEMENT COMPANY

- (A) If the property is owned by a corporation and/or out of area beneficiary, trustee or owner, a local property management company shall be contracted to perform weekly inspections to verify that the requirements of this chapter, and any other applicable laws, are being met. The local property management company must have authority to 1) comply with orders of the City, 2) provide a trespass authorization upon request of City Code Enforcement officials if the property is illegally occupied, 3) conduct weekly inspections of the property, 4) request utilities be turned on, 5) provide authority to the City to enter the property upon request.
- (B) The property shall be posted with the name and 24-hour contact phone number of the local property management company. The posting shall be no less than 18" X 24", shall be of a font that is legible from a distance of forty-five (45) feet, and shall contain the following verbiage: "THIS PROPERTY MANAGED BY _____," and "TO REPORT PROBLEMS OR CONCERNS CALL (name and phone number)".
- (C) 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 of the front of the property so it is visible from the street. If no such area exists, the posting shall be on a stake of sufficient size to support the posting, in a location that is visible from the street to the front of the property, and to the extent possible, not readily accessible to potential vandalism. Exterior posting must be constructed of, and printed with weather resistant materials.
- (D) 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. If the property management company determines the property is not in compliance, it is the company's responsibility to bring the property into compliance.

Sec. 14-463

ADDITIONAL REQUIREMENTS

- (A) In addition to the enforcement remedies established in this Chapter, the City shall have the authority to require the beneficiary, trustee, owner 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 doors, windows or other openings, installing additional security lighting, increasing on-site inspection frequency, or other measures as may be reasonably required to secure and reduce the visual decline of the property.
- (B) Any management company, contractor or other servicer hired pursuant to maintaining property under this division shall obtain a City of Azusa business license prior to commencing work within the city.

Sec. 14-464 ENFORCEMENT

- (A) Any violation of this chapter shall constitute a public nuisance.
- (B) Any person, partnership, association, corporation, fiduciary or other legal entity, that owns, leases, occupies, controls or manages any property subject to this chapter and that causes, permits, or maintains a violation of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided in Section 1.10 of this Code. Violations shall be treated as a strict liability offense, a violation shall be deemed to have occurred regardless of a violator's intent.
- (C) If an enforcement official determines a violation of this chapter exists, the enforcement official may issue an administrative citation for each day a violation exists, containing fines up to one thousand dollars (\$1,000) per day, per violation, as provided in chapter 1.24.
- (D) This section is intended to be cumulative to, and not in place of, other rights and remedies available to the City pursuant to the City of Azusa Municipal Code, including any civil, criminal and/or administrative action.
- (E) Any and all costs, including attorney's fees, incurred by the City in enforcing this Chapter shall be recoverable, and shall constitute a lien and special assessment against the subject property, pursuant to the definitions and procedures in sections 14-421, 14-422, 14-423, 14-424, 14-425 and as otherwise provided by this Code.

Sec. 14-465

JOINT AND SEVERAL LIABILITY

The duties/obligations specified in this chapter shall be joint and several among and between all trustees and beneficiaries and their respective agents. In addition, local property management companies retained pursuant to section 14-452 shall also be jointly and severally liable for compliance with sections 14-450 and 14-451.

Sec. 14-466

APPEALS

Any person aggrieved by any of the requirements of this chapter may appeal a determination made hereunder in the manner specified in Section 14-418 of this Code.”

SECTION 2. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end the provisions of this Ordinance are declared to be severable. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 3. Effective Date. This ordinance shall take effect and be in full force on the 30th day after its adoption.

SECTION 4. Notice of Adoption. The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Azusa. This Ordinance shall take effect thirty (30) days after its adoption.

PASSED, APPROVED, and ADOPTED this 6th day of January, 2014.

/s/ Joseph Romero Rocha, Mayor

ATTEST: Jeffrey Lawrence Cornejo, Jr., City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF AZUSA

I HEREBY CERTIFY that the foregoing Ordinance No. 13-O6, was duly introduced and placed upon its first reading at a regular meeting of the Azusa City Council on 16th day of December, 2013 and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the Azusa City Council on the 6th day of January, 2014 by the following vote to wit:

AYES: COUNCILMEMBERS: GONZALES, CARRILLO, ALVAREZ, ROCHA
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: MACIAS

/s/ Jeffrey Lawrence Cornejo, Jr., City Clerk

APPROVED AS TO FORM: /s/ Marco A. Martinez, Best Best & Krieger LLP, City Attorney