

ORDINANCE NO. 2737

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
ADDING CHAPTER 84 TO TITLE 8 OF THE GARDEN GROVE MUNICIPAL CODE
REQUIRING THE REGISTRATION AND MAINTENANCE OF ABANDONED PROPERTIES

City Attorney Summary

This Ordinance adds Chapter 84 to Title 8 of the Garden Grove Municipal Code to require that those with title to or an interest in vacant or abandoned property, including those such as a bank or other lender holding a deed of trust on property, to register that property with the City of Garden Grove and maintain the property while it remains vacant or abandoned. Violations of this Ordinance constitute a public nuisance. Violation of this Ordinance may subject a violator to misdemeanor prosecution, nuisance abatement, administrative fines and/or other remedies, as appropriate.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND
DETERMINES AS FOLLOWS:

RECITALS

WHEREAS, the presence of vacant, abandoned real property often leads to unauthorized entry into, occupation of and destruction of real property. As a result, such property creates an immediate danger to public health and safety; and

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

WHEREAS, the presence of vacant, abandoned real property can create a 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 or out of state lenders and trustees; and

WHEREAS, it is the responsibility of owners and also of all other persons or entities holding equitable title or any other interest in property to prevent such property from becoming a burden to the neighborhood and community and a threat to the public health, safety, and welfare; and

WHEREAS, the City has an obligation to protect its residential neighborhoods and other areas within the City from decline and devaluation; and

WHEREAS, nothing in this ordinance is intended to alter, affect or preempt any state or federal law relating to foreclosure on real property.

NOW, THEREFORE, THE CITY COUNCIL of the City of Garden Grove does hereby ordain as follows:

Section 1. A new Chapter 8.84 is added to the Garden Grove Municipal Code to read as follows:

Chapter 84

Registration and Maintenance of Abandoned Properties

Sections:

- 8.84.010 Purpose
- 8.84.020 Definitions
- 8.84.030 Registration
- 8.84.040 Maintenance Requirements
- 8.84.050 Security Requirements
- 8.84.060 Additional Authority
- 8.84.070 Fees
- 8.84.080 Enforcement
- 8.84.090 Violation/Penalty

8.84.010 PURPOSE

It is the purpose and intent of the Garden Grove City Council, through the adoption of this chapter, to establish an abandoned real property registration program as a mechanism (1) to protect the community from becoming blighted through the lack of adequate maintenance and security of abandoned and vacated properties; and (2) to help eliminate the danger to persons and property created by vacant properties which are not properly secured and maintained.

8.84.020 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: 1) is under a current notice of default and/or notice of trustee's sale; 2) is the subject of a pending tax assessor's lien sale; 3) has been the subject of a foreclosure sale where the title was retained

by the beneficiary of a deed of trust involved in the foreclosure; or 4) has been transferred under a deed in lieu of foreclosure/sale.

"Accessible" means a property that is accessible through a compromised/ breached gate, fence, wall or similar condition or a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

"Beneficiary" means a lender or holder of a note secured by a deed of trust.

"Beneficiary/Trustee" means both the beneficiary and the trustee. When any act is required of the beneficiary/trustee by this chapter, both are responsible for performing such act and may be charged with a violation of this Code for failure to act. However, it is sufficient if it is accomplished by either one. If information is required to be provided, then both must provide such information.

"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 and often used in California instead of a mortgage. This definition applies to any and all subsequent deeds of trust, i.e.: second trust deed or third trust deed.

"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.

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

"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 and not occupied by authorized persons. 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 and statements by neighbors, passersby, delivery agents, or government employees that the property is vacant.

"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.

"Local" means within forty (40) road/driving miles distance of the subject property.

"Neighborhood standard" means those conditions that are present on a simple

majority of properties within a three hundred (300) foot radius of an individual 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.

"Out of area" means in excess of forty (40) road/driving miles distance of the subject 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.

"Responsible person" means any person, partnership, association, corporation, or fiduciary having legal or equitable title to or any interest in any real property, including, but not limited to, trustees and beneficiaries of a deed of trust on the property and any other lien holder on the property.

"Securing" or "Secure" means such measures as may be directed by the Police Chief, or his or her designee, or the Director of Community Development, 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/padlocking of gates and the repair, replacement or boarding of doors, windows 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.

"Trustee" means the person, partnership, firm, corporation or other entity holding a deed of trust on a property.

"Trustor" means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

"Vacant" means a building/structure that is not occupied by authorized persons.

8.84.030 REGISTRATION

(a) Any beneficiary/trustee, who holds a deed of trust on a property located within the City of Garden Grove 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 Orange County Recorder's Office. This inspection shall be to determine whether the property is vacant. 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 Chief of Police, or his or her designee, on forms provided by the City.

(b) Any beneficiary/trustee, who holds a deed of trust on a property located within the City of Garden Grove, and which property on the effective date of this chapter: 1) is under a current notice of default; 2) is under a current notice of trustee's sale; 3) is the subject of a pending tax assessor's lien sale; 4) has been, within eighteen (18) months preceding the effective date of this ordinance, the subject of a foreclosure where the title was retained by the beneficiary of the deed of trust involved in the foreclosure; or 5) was, within eighteen (18) months preceding the effective date of this ordinance, transferred under a deed in lieu of foreclosure/sale, shall, on or before twenty (20) days following the effective date of this chapter, perform an inspection of the property that is the security for the deed of trust to determine whether the property is vacant. 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 Chief of Police, or his or her designee, on forms provided by the City.

(c) If the property is occupied but remains in default it shall be inspected by the beneficiary/trustee, or an agent/designee of the beneficiary/trustee, monthly to determine whether the property is vacant until 1) the trustor or other party remedies the default; or 2) the foreclosure is completed and ownership is transferred to a new owner who is not the former beneficiary or trustee; or 3) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the beneficiary/trustee shall, within ten (10) days of that inspection, register the property with the Chief of Police, or his or her designee, on forms provided by the City.

(d) The beneficiary/trustee shall also register any property that becomes vacant after a foreclosure sale where the title was transferred to the beneficiary of a deed of trust involved in the foreclosure and any property, which becomes vacant after being transferred under a deed in lieu of foreclosure/sale.

(e) Each registration shall contain the following information for both the beneficiary and trustee: name (corporation or individual); the street/office address (not a post office box) and, if different, the mailing address; a direct contact name (corporation or individual); a direct contact name and phone number for the person handling the deed of trust and/or foreclosure; and, in the case of a corporation or out of area beneficiary or trustee, the local property manager/management company responsible for the security and maintenance of the property.

(f) The annual registration fee, established by City Council resolution, shall accompany the registration form. The fee and registration shall be valid for one calendar year following the date on which registration is initially due to the City. Subsequent registrations and fees are required and due each year thereafter on the

anniversary of the due date of the initial registration, until such time as the property is transferred or becomes legally occupied.

(g) Inspections conducted pursuant to this chapter are intended only for the purposes set forth in this chapter and not for purposes of triggering disclosure obligations to potential real property purchasers. Such obligations are set forth in and controlled pursuant to state law.

(h) Persons or entities required to register properties pursuant to this chapter shall keep such properties registered and all required information updated and comply with all the security and maintenance requirements of this chapter for the entire time such properties remain vacant.

(i) When properties required to be registered become occupied or title is transferred, the prior beneficiary, trustee, responsible person and/or owner shall notify the Chief of Police, or his or her designee, in writing within ten (10) days of the occupancy or transfer.

(j) Any person, partnership, firm, corporation or other entity required to register a property pursuant to this chapter shall report any change of information contained in the registration within ten (10) days of the change.

8.84.040 MAINTENANCE REQUIREMENTS

Responsible persons, including beneficiaries/trustees, shall maintain properties subject to registration pursuant to this chapter, as required by Chapter 9.24 and any other applicable provisions of federal, state or local law, and shall keep such properties 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, or printed material and shall take any other action necessary to prevent giving the appearance that the property is abandoned, including but not limited to the following:

(a) The property shall be kept 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.

(b) Visible front and side yards shall be landscaped and maintained in accordance with city requirements and neighborhood standards.

(c) Permitted landscaping includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings designed for residential installation.

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

(e) Required maintenance includes, but is not limited to, regular watering, irrigation, cutting, pruning and mowing of required landscape and removal of all trimmings.

(f) 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.

8.84.050 SECURITY REQUIREMENTS

Responsible persons, including beneficiaries/trustees shall secure properties subject to registration pursuant to this chapter, in a manner to prevent access by unauthorized persons, including but not limited to the following: 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 or any other person to access the interior of the property and or structure(s). In the case of broken windows securing means the re-glazing or boarding of the window. No windows shall remain boarded for longer than thirty (30) days. Prior to the expiration of thirty (30) days, the boarded windows shall be replaced. Responsible persons shall further do the following:

(a) If the responsible person is a corporation and/or out of area beneficiary/trustee/owner, that responsible person shall retain a local property manager to perform weekly inspections to verify that the requirements of this chapter, and any other applicable laws, are being met.

(b) The property shall be posted with name and 24-hour contact phone number of the local property manager. The posting shall be no less than 18 inches by 24 inches and shall be of a font that is legible from a distance of 45 feet and shall contain along with the name and 24-hour contact number the words "THIS PROPERTY MANAGED BY _____ [insert name] _____" and "TO REPORT PROBLEMS OR CONCERNS CALL [insert local telephone number] _____." 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 visible 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.

(c) The responsible persons or the local property manager shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this chapter.

8.84.060 ADDITIONAL AUTHORITY

In addition to the enforcement remedies established in Chapter 9.24, the Police Chief, or his or her designee, or the Director of Community Development, or his or her designee, shall have the authority to require any responsible person of any abandoned property affected by this chapter to implement additional maintenance and/or security measures including, but not limited to, securing any/all doors, windows or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard, disconnecting utilities and removing meter boxes, or any other measures as may be reasonably calculated to arrest the decline of the property, prevent unauthorized entry and/or ensure maintenance of the property in accordance with this code.

8.84.070 FEES

The fee for registering and re-registering an abandoned property shall be set, from time to time, by resolution of the City Council.

8.84.080 ENFORCEMENT

Violations of this chapter constitute a public nuisance and may be enforced in any combination as allowed in Title 9, Chapter 24, Section 210 and/or any other provision of this code or applicable law.

8.84.090 VIOLATION/PENALTY

(a) Violations of this chapter shall be treated as a strict liability offense regardless of intent. Any person, partnership, association, firm, corporation, fiduciary or other entity, that violates any provision or requirement of this chapter shall be guilty of a misdemeanor and subject to prosecution pursuant to Title 1, Chapter 4, subject to enforcement pursuant to Title 9, Chapter 24, Section 210 and/or subject to enforcement pursuant to any other provision of this code or applicable law, as appropriate. Violators of this chapter may be issued administrative citations and be liable for administrative fines in accordance with Title 1, Chapter 22. It shall constitute a new and separate offense for each and every day during any portion of which a violation of, or failure to comply with, any provision or requirement of this chapter is committed, continued, or permitted by any person, partnership, association, firm corporation, fiduciary or other entity.

(b) Pursuant to Government Code Section 38773.7, upon entry of a second or subsequent civil or criminal judgment within a two-year period for abatement of a

public nuisance, the court may order the owner to pay treble the costs of abatement.

(c) Pursuant to California Government Code Sections 38773 and 38773.5, all expenses incurred by the City in connection with any action to abate a public nuisance shall be charged to and become an indebtedness to the owner of such structure or premises, and the City may place a lien or special assessment upon the affected property, as provided in Section 9.24.180 of this Code. Any attorney's fees expended in any action to abate a public nuisance may be recovered by the prevailing party in actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney's fees.

Section 2. Subsection 010(a) of Chapter 22 of Title 1 of the Garden Grove Municipal Code is hereby amended as follows:

1.22.010 Authority and Fines.

(a) Any person violating Chapter 5.28, Sections 030, 040 and 050(a) of Chapter 8.64 or Chapter 8.84 of the Garden Grove Municipal Code may be issued an administrative citation by an enforcement officer and subject to an administrative fine as provided in this chapter.

Section 3. Subsections 010(g)(1)-(3) of Chapter 22 of Title 1 of the Garden Grove Municipal Code are hereby added to read as follows:

(g) In the case of an administrative citation issued for violation of any of Chapter 8.64, Sections 030, 040 or 050(a) or any provision of Chapter 8.84 of this Code, administrative fines shall be assessed in the following amounts:

- (1) A fine of three hundred dollars (\$300.00) for a first violation;
- (2) A fine of six hundred dollars (\$600.00) for a second violation within one year from the date of the first violation;
- (3) A fine of one thousand dollars (\$1,000.00) for each additional violation within one year from the date of the first violation.

Section 4. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each other section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions,

sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Section 5. EFFECTIVE DATE

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

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ___ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on November 11, 2008, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BROADWATER, JONES, NGUYEN, ROSEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE