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Councilmember

City Attorney

OAKLAND CITY COUNCIL

Ordinance No. 13126 **C.M.S.**

AN ORDINANCE AMENDING AND RESTATING OAKLAND MUNICIPAL CODE CHAPTER 8.54 (THE FORECLOSED AND VACANT RESIDENTIAL BUILDING REGISTRATION PROGRAM) BY EXPANDING IT TO INCLUDE BOTH VACANT AND OCCUPIED RESIDENTIAL PROPERTIES AND MULTIPLE UNIT BUILDINGS TO THE FORECLOSED AND DEFAULTED RESIDENTIAL PROPERTY REGISTRATION PROGRAM, TO SET OUT MORE SPECIFIC MAINTENANCE AND SECURITY REQUIREMENTS AND TO PROVIDE FOR ABATEMENT OF BLIGHT AND NUISANCES AT SUCH PROPERTIES

WHEREAS, properties throughout the City of Oakland which lenders have recorded a Notice of Default (defaulted) or have taken ownership through a Deed of Trust (foreclosed) have been and continue to be significant and unnecessary attractors for blighting conditions that create severe health hazards in neighborhoods, including explosions of vector populations, accumulations and dispersals of pollutants and target-organ toxins, and degradation of air quality, and that adversely impact the quality of life in neighborhoods and deny residents their enjoyment of life; and

WHEREAS, defaulted and foreclosed properties throughout the City also have been and continue to be significant and unnecessary attractors for trespassers and transient occupants that foster and enable criminal activities, including theft, vandalism, prostitution, and the sale and use of narcotics and other controlled substances; and

WHEREAS, defaulted and foreclosed properties throughout the City also have been and continue to be a significant and unnecessary discourager to economic development and contributor to the decline of property values in neighborhoods; and

WHEREAS, the City has expended and continues to expend vast and unnecessary amounts of limited resources and scarce funds investigating defaulted and foreclosed properties, mitigating the detrimental effects of neglected maintenance, curtailing associated criminal activity, and monitoring the recurrence of nuisance activities; and

WHEREAS, a critical and immediate need therefore exists to safeguard life and limb, health, property, and public welfare and to reduce the substantial and unnecessary economic toll on the business community and the citizens of Oakland resulting from the effects of defaulted and foreclosed properties by implementing an expansion of the City's existing program for identifying and monitoring these properties; and

WHEREAS, the costs to the City for implementing and sustaining such an expanded program for defaulted and foreclosed properties should be borne by the property owners and those mortgagees, vendees, assignees, trustees, lessees, agents, firms, companies, corporations, partnerships, and similar entities who otherwise have control of or financial interest in the property, rather than the citizens of Oakland; and

WHEREAS, said costs may be recovered from the property owners and others having control of or financial interest in the properties by imposing and collecting necessary and equitable fees and interest; and

WHEREAS, historically, the resource requirements for monitoring defaulted or foreclosed properties increases with the time that building remains vacant or occupied by involving an escalating commitment from Code Enforcement administrative, fiscal, and supervisory staff, and involving a proliferating interaction with other City departments and agencies, including Real Estate, Finance, City Attorney, Fire, and Police and by City officers and officials; and

WHEREAS, historically, Code Enforcement has tracked its costs, through its computerized accounting system, for processing complaints of defaulted and foreclosed properties, for field monitoring of defaulted and foreclosed properties, and for interacting with property owners and the public concerning defaulted and foreclosed properties; and

WHEREAS, the existing registration and inspection fees set by ordinance in the City of Oakland's Master Fee Schedule reflects the amounts for the Code Enforcement costs pertaining to foreclosed and vacant properties; and

WHEREAS, historically, said Code Enforcement costs have increased with each successive year that a property remains foreclosed and vacant at a rate not less than three (3) times the costs associated with the initial processing of a complaint for a foreclosed and vacant property and inspecting the property; and

WHEREAS, historically, there are additional citywide costs of said resource requirements in areas of real estate divesture and acquisition, fire prevention and suppression, neighborhood revitalization, nuisance and criminal activities, hazardous material identification and disposal, litigation, liens and collections, degradation of the general tax levy, and public notification and hearings; and

WHEREAS, defaulted and foreclosed properties impose additional financial burdens on neighbors, prospective purchasers, and the business community in the City of Oakland; and

WHEREAS, on February 2, 2010, the Council of the City of Oakland amended the Municipal Code (ordinance no. 12991 C.M.S.) and adopted a new chapter 8.54 which established a foreclosed and vacant property registration program, and also amended the Master Fee Schedule and established fees to recover costs associated with the implementation and operation of said registration program; and

WHEREAS, the detrimental effects and additional financial burdens that defaulted properties and foreclosed and occupied properties impose on neighbors, prospective purchasers, and the business community in the City of Oakland have equaled or exceeded the impacts of caused by foreclosed and vacant properties; and

WHEREAS, the City Council has considered expanding the scope of said registration program to included defaulted and foreclosed properties that are either vacant or occupied, the result of which will require additional City resources to implement and operate; and

WHEREAS, new fees will be necessary to recover the additional costs for said expansion of the existing foreclosed and vacant property registration program; and

WHEREAS, pursuant to California Government Code section 50076, setting the initial fee and applying said rate-of-increase to the initial implementation costs of a registration program in order to establish fees to sustain such a program is a reasonable, fair, and equitable methodology, the results of which would be proportionately representative and would not exceed the estimated direct costs incurred for services provided by Code Enforcement nor the estimated indirect costs incurred by other City departments, agencies, officers, and officials; and

WHEREAS, the City Council intends for penalty monies collected from the enforcement of the foreclosed and defaulted properties registration and blight abatement programs be utilized to prevent foreclosures and/or preserve affordable housing opportunities in Oakland; and

WHEREAS, the funds from penalties collected pursuant to this ordinance, beyond what is needed to recover the costs of program operations, shall be deposited into the Affordable Housing Trust Fund (Fund 7450) and appropriated to a project to be established for foreclosure prevention or affordable housing preservation and production unless state or other law requires penalties to be utilized for other purposes. Specific programs and projects shall be subject to approval by the City Council; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities) this project is categorically exempted; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals

A. The Council of the City of Oakland finds and determines that the foregoing recitals are true and correct and hereby incorporates them as part of this ordinance.

B. The Council of the City of Oakland further finds and determines that the adoption of an ordinance amending the Vacant Foreclosed Residential Properties Registration Program to: add registration requirements for occupied and vacant defaulted properties, occupied and vacant foreclosed properties, as well as maintenance and security requirements for vacant defaulted properties complies with the California Environmental Quality Act, and to rename the ordinance the Foreclosed and Defaulted Residential Property Registration and Abatement Program.

SECTION 2. Amendment and Restatement of O.M.C Chapter 8.54

Ordinance No. 12991 C.M.S., as amended and referred to as the Foreclosed and Vacant Residential Buildings Registration Program of the City of Oakland, is hereby amended and restated as set forth below:

Chapter 8.54 - FORECLOSED AND DEFAULTED RESIDENTIAL PROPERTY REGISTRATION and ABATEMENT PROGRAM

Article I. - Intent

8.54.010 - Title.

This Chapter 8.54 and the provisions herein shall be known as the "Foreclosed and Defaulted Residential Property Registration and Abatement Program" and may be cited as such, and will be referred to herein as "this Chapter."

8.54.020 – Purpose and Intent.

The purpose of this Chapter is to promote the health, safety, and general welfare of the residents, workers, visitors, property owners, and proprietors of the City of Oakland and the economic stability and viability, and livability of neighborhoods in the City by requiring the registration and monitoring of foreclosed and defaulted residential properties. This program will protect and preserve the livability, appearance, and social fabric of the City and will also protect the public from health and safety hazards and the impairment of property values resulting from the neglect and deterioration of real property and improvements.

It is the intent of the City Council, through the adoption of this Chapter, to establish a mechanism to protect neighborhoods from becoming blighted through the lack of maintenance and security of occupied and vacant foreclosed and vacant defaulted residential properties; to establish a foreclosed and defaulted residential property registration and abatement program and to set forth guidelines for the maintenance of occupied and vacant and/or distressed residential properties. In addition, this Chapter provides for the registration and inspection of occupied defaulted residential properties to aid on foreclosure prevention efforts and because such properties have an increased potential to become vacant or blighted.

8.54.030 - Scope.

A. The provisions of this Chapter shall apply to the following properties in the City of Oakland:

1. Vacant residential properties that are the subject of a recorded notice of default;

2. Lawfully occupied residential properties that are distressed (notice of default recorded);

and

3. Vacant and occupied residential properties that have been foreclosed upon.

8.54.040 - Authority.

The Building Official and his or her designees are authorized to enforce the provisions of this Chapter.

8.54.050 - Exclusions.

The provisions of this Chapter shall not apply to properties owned by the United States of America, the State of California, the County of Alameda, the City of Oakland, or to any of their respective agencies or political subdivisions, except those over which the City of Oakland has authority to assert jurisdiction; nor shall it apply to the Oakland Housing Authority. It is the intent of this Chapter to apply to and not exclude any property in which entities, including, but not limited, to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), California Housing Finance Agency (CHFA), or any similar entity, has any financial or legal interest, ownership or otherwise, unless such entity can demonstrate to the City's satisfaction or to a Court that it is exempt from this Chapter or otherwise is not subject to City regulation on the basis of preemption or other legal basis.

Article II. - Definitions

8.54.100 - Construed meanings.

For the purposes of this Chapter, certain words and phrases are defined and certain provisions shall be construed as set forth herein, unless it shall be apparent from the context that they have different meanings. Words in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

"Abandoned" means any building, structure or real property that is vacant or occupied by a person or persons without a legal right of occupancy.

"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 real 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 person or entity holding, owning, participating in, or otherwise having an interest in the proceeds for a loan represented by a note secured by a deed of trust.

"Blighted" has the same meaning as set forth in Chapter 8.24.

"Boarded" means the partial or full covering, securing, or reinforcing with plywood, lumber, or comparable materials of windows, skylights, doors/ sidelights/ transoms, underfloor access, and similar exterior openings in buildings or portions thereof which is intended to dissuade, mitigate, and prevent vandalism and unauthorized entry.

"Building Official" has the same meaning as set forth in the Oakland Building Construction Code, and includes his or her designee, and his or her successor in title or successor position.

"Building Services Division" means that division or other part of the City of Oakland administration delegated with enforcing building and housing codes and property blight or its successor or other division later delegated with these duties

"Certified Property Manager" means a licensed property manager who has have received additional training in the field of residential property management and has a certification in property management such as a California Certified Residential Manager (CCRM), Certified Property Manager (CPM®), Certified Apartment Manager (CAM), or the equivalent certification, or can demonstrate the equivalent training and experience in managing residential rental property in Oakland, including knowledge of state and Oakland rent and eviction laws pursuant to standards established by the City administration.

"Days" means consecutive calendar days, unless otherwise stated.

"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, without completion of a foreclosure proceeding.

"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. second trust deed, third trust deed, etc.

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

"Distressed" means any property that is subject to a current notice of default and/or notice of trustee's sale, pending tax assessors 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, regardless of vacancy or occupancy by a person with no legal right to occupancy.

"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 shutters; the presence of furnishings and/or personal items consistent with residential habitation; statements by neighbors, passersby, delivery agents, or government employees that the property is legally occupied; or actual contact with occupants.

"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; 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 to satisfy the debt of a defaulting trustor (borrower), including a transfer by Deed in lieu of foreclosure.

"Inspection" means a physical investigation at a property to obtain Evidence Of Occupancy or vacancy, or the physical condition of the property and/or to verify compliance with this Chapter and any other applicable code or law. In the case of a property that is the subject of a Notice of Default, but has not yet been foreclosed, the inspection need only consist of a visual inspection of the exterior of the property.

"Local Property Management Company" means a property management company and/or Certified Property Manager that is either based or maintains an office within 20 miles of city limits and has a current business tax certificate issued by the City.

"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.

"Oakland Building Construction Code" means Chapter 15.04, as may be amended from time to time.

"Occupied" means lawful habitation of the property by trustor or tenants.

"Openings" mean a window, skylight, door/sidelight/ transom, underfloor access, or similar exterior opening in a building which is broken; or cannot be fully closed; or has an improperly functioning, unapproved, or missing securing device; or is partially or fully missing; or any combination of these conditions.

"Out-Of-Area" means in excess of 20 miles from city limits

"Owner" means any real person, partnership, association, corporation, limited liability company, limited partnership, fiduciary, estate, or any other legal entity having a legal or equitable title in the property.

"Owner Of Record" means the person holding recorded title to the residential real property on question at any point in time when official records are produced by the Alameda County Clerk-Recorder's Office.

"Property" means any unimproved or improved real property, or portion thereof, situated in the City including the buildings, structures, or other improvements located on the property regardless of condition.

"Residential" means property which only contains a residential occupancy, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

"Responsible Party" means the owner of the property, or the beneficiary and/or trustee pursuing foreclosure of a property subject to this Chapter secured by a mortgage, deed of trust or similar instrument, or the owner of the property following a foreclosure, if the owner is the beneficiary, subsidiary or affiliate of the beneficiary, or is otherwise associated with the beneficiary. Responsible Party excludes the pre-foreclosure property owner(s).

"Securing" means such measures as may be directed by the Building Official 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.

"Shall/Will" means a definitive directive which includes the ordinary accepted meaning of the word "must."

"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 any building, structure or real property that is unoccupied or occupied by a person without a legal right to occupy.

8.54.110 - Accepted meanings.

Where terms are not defined in this Chapter, they shall have their ordinary accepted meanings within the context with which they are used.

Article III. – Registration

8.54.200 – Properties Subject to Registration

The following properties must be registered with the City as part of the Foreclosed and Defaulted Residential Property Registration and Abatement Program:

A. Vacant and Occupied Residential Properties with a Recorded Notice of Default.

1. Within 30 days of recording a Notice of Default with the Alameda County Clerk-Recorder's Office, a Responsible Party or its designee shall perform an inspection of the property that is the security for the Deed of Trust the Notice of Default is recorded against.

2. If the property is found to be Vacant or shows sufficient Evidence Of Vacancy that it is deemed to be Abandoned, by this Chapter or under the deed of trust, the Responsible Party shall, within 30 days of the inspection, register with the City and pay the required registration fee pursuant to O.M.C. 8.54.20. If the property is deemed Abandoned, the Beneficiary shall invoke an abandonment or any other appropriate provision express or implied in the Deed of Trust to permit the Beneficiary to assume possession or control of the Property sufficient to permit the Beneficiary or other Responsible Party to comply with the requirements of this Chapter.

3. If the property is Occupied and a Notice of Default has been recorded against the property, the Responsible Party or its designee shall:

a. Register the property pursuant to O.M.C. 8.54.200A.2, but shall not be required to pay a registration fee; and

b. Inspect the property pursuant to O.M.C. 8.54.310 until:

i. The Notice of Default is withdrawn or rescinded; or

ii. The property becomes Vacant and/or shows sufficient Evidence Of Vacancy, at which time the Responsible Party or their designee shall, within 30 days of that inspection, register the property as Vacant and pay the required registration fee described in O.M.C. 8.54.230 for vacant and defaulted properties.

c. If the property subject to a recorded Notice of Default is Occupied by a tenant or tenants, any Responsible Party or its designee shall provide the tenant(s) with a

written statement of his/her/their rights in a form approved by the Building Official. The written statement shall be either mailed to the tenants at the physical address of the property or securely posted on the property. If the written statement is posted on the property, the paper used shall be weather-resistant.

B. Vacant and Occupied Foreclosed Residential Properties

1. All residential 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 or through a Deed in Lieu of Foreclosure.

2. Such properties must be registered within 30 days of transfer to the Beneficiary.

3. Foreclosed properties lawfully Occupied by tenants under leases entered into by the previous landlord (i.e. Trustor) shall register with the City, pay the registration fee under this chapter, and comply with all applicable Oakland and state landlord-tenant laws.

4. If the property is found to be Vacant or shows sufficient Evidence of Vacancy and has already been registered, the Responsible Party shall, within 30 days of the vacancy, change the status of the property to Vacant on the City's registration, without paying an additional fee.

C. A Responsible Party shall ensure that the utilities of lawfully Occupied properties are not terminated and if terminated shall ensure that the utilities are reinstated, unless the Responsible Party has written, credible evidence that the tenant is responsible under a valid rental agreement to pay for the cost of utilities or any individual utility.

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

8.54.210 Recordation of Transfer of Loan/Deed of Trust/Substitution of Beneficiary of Deed of Trust

Within 10 days of a property transaction involving a change in the identity of an owner or the Owner of Record, a transfer/assignment of a loan or Deed of Trust, or alternatively a Substitution Of Beneficiary Of Deed Of Trust secured by property located within Oakland, each Beneficiary and trustee engaged in said transaction or transfer/assignment/substitution shall record, via the Alameda County Clerk-Recorder's Office, an instrument reflecting the identity, mailing address and telephone number of the trustee and Beneficiary responsible for receiving payments associated with the loan or Deed of Trust in question. This duty/obligation shall be joint and several among and between all trustees and beneficiaries and their respective agents. This section applies only to residential properties that would be subject required to register pursuant to this Chapter if a Notice of Default is recorded.

8.54.220 Registration Procedure

A. Registration may be accomplished by either or both of the following methods:

1. By completing and returning to the Building Official a City-provided registration form with required fee; and/or

2. Registering online at a website established by the City for the purpose of registering properties under this Chapter.

B. The registration shall contain the name, direct contact information including telephone number, direct street/mailing address (no P.O. boxes) of the Responsible Party/parties. If, pursuant to this Chapter, the hiring of a Local Property Management Company is required, the name, direct street/mailing address (no P.O. boxes) and telephone number of the Local Property Management Company responsible for inspecting, securing, and maintaining the property shall also be disclosed on the registration form.

C. The registration shall also include a written report in an approved format of an interior and exterior inspection of the premises by an approved local individual or firm attesting to the conditions of the property, including exterior blight, interior habitability, utility service, and secured openings, and a written plan detailing the means, methods, and times for periodic inspections and the local individual or firm who shall be responsible for assuring compliance with provisions of this Chapter.

D. The registration shall be renewed annually until the subject property is no longer subject to registration under this Chapter. Any changes to the information required on the registration shall be reported to the Permit Center in writing within 10 days of the change. The City is not responsible for verifying the accuracy of the information provided.

E. Responsible Parties are affirmatively required to deregister properties once these properties are no longer subject to registration pursuant to this Chapter.

F. The registration or deregistration may also require such information as may be deemed important by the Building Official to implement this Chapter.

8.54.230 Fees.

Fees for registration of all properties required to be registered pursuant to this Chapter are set out in the master fee schedule. In the case of hard copy registration under 8.54.220(A)(1), initial registration fee shall accompany the registration form. The City may provide for electronic payment of fees that are registered through the City's website. Otherwise, fees must be received by the City within 10 days of the date of registration. Fees shall be fully paid at the time of submitting the statement of registration to the City and annually thereafter on the anniversary date of submittal, unless a subsequent ordinance of the City Council to amend the master fee schedule otherwise specifies.

8.54.240 - Status

The Responsible Party shall immediately advise the City in writing of a material change in the status of

a property subject to this Chapter, including, but not limited to, becoming blighted, unsecured, fire damaged, hazardous, or uninhabitable occupied, or having a change in ownership.

8.54.250 – Special Provisions Where Property is Encumbered with the Security Interests of Multiple Beneficiaries

A. In the event that a property is encumbered by the security interests of more than one beneficiary at the time when a Notice of Default is recorded, the beneficiary who first causes a Notice of Default for its security interest to be recorded shall be responsible for registering the property with the City as provided in O.M.C. 8.54.220.

B. Upon recordation of a Notice of Default on a property by any Beneficiary, regardless of the security lien interest priority of such Beneficiary in the property in relation to the priority of the security interests of the other Beneficiaries in the same property, the City, in its discretion may elect to enforce the provisions of the Chapter against one or more Beneficiaries who have not separately recorded a Notice of Default against the property.

ARTICLE IV. Inspection, Maintenance, and Security Requirements

8.54.300– Retention of Management Company

A. If any of the following is applicable, the Responsible Party shall, at his or her or its own expense, hire a Local Property Management Company that will be responsible for the inspection, maintenance, management, and security of the property:

1. The owner of the property that acquired through a Foreclosure sale resides or has a principal place of business or headquarters that is located Out-Of-Area;

2. The owner of the property that was acquired through a Deed in Lieu of Foreclosure or sale resides or has a principal place of business or headquarters that is located Out-Of-Area; or

3. Both the Beneficiary and trustee of a property upon which a Notice of Default has been recorded reside have a principal place of business or headquarters that is located Out-Of-Area.

B. The Local Property Management Company shall be licensed to do business in the City. The Local Property Management Company is required to conduct regular inspections of an occupied or vacant property, pursuant to the requirements of 8.54.310, to ensure that the property remains in compliance with all applicable laws and regulations. The Local Property Management Company shall verify that the property has been inspected pursuant to this Chapter via the Building Services' website on or before the 1st day of each calendar month for which the real property remains Vacant.

C. Properties for which the retention of a Local Property Management Company is required under this Chapter shall be posted with the name and 24-hour contact telephone number of the Local Property Management Company in accordance with the standards established by the City. Additionally, the local management company must be authorized to 1) comply with the code enforcement orders issued by the City and 2) provide a trespass authorization upon request of local law enforcement authorities if the

property is unlawfully occupied.

D. For inspection, maintenance, management, and security of Occupied foreclosed properties the Responsible Party shall utilize a Certified Property Manager. Inspection, maintenance, management, and security of Vacant properties or Occupied properties, that are the subject of a Notice of Default but not yet foreclosed, and subject to registration pursuant to this Chapter are not required to be carried out by a Certified Property Manager.

8.54.310 - Inspection Requirements

A. Foreclosed Properties

1. A Vacant Foreclosed property or a Foreclosed property that show sufficient Evidence Of Vacancy shall be inspected weekly.

2. An Occupied Foreclosed property ("Real Estate Owned") shall be inspected monthly.

3. Inspection includes, but is not limited to, a physical investigation of the property subject to registration pursuant to this Chapter to ensure compliance with all applicable laws, including Oakland Municipal Code Title 8 Chapter 8.24.

B. Properties Subject to a Recorded Notice of Default

1. A Vacant or Occupied property in default or Distressed shall be inspected monthly.

2. Inspection includes, but is not limited to, a physical investigation of the property subject to registration pursuant to this Chapter to ensure compliance with all applicable laws, including Oakland Municipal Code Title 8 Chapter 8.24.

C. On the 1st business day of each month, the party who conducted the inspection (the Local Property Management Company or the local Responsible Party) shall verify the required inspection either on the website set up for registration or on forms provided by the Building Official.

8.54.320 – Maintenance Requirements

A. It is declared a public nuisance for any person, partnership, association, corporation, fiduciary, or other legal entity that owns, leases, occupies, controls, or manages any property subject to the registration requirement of this Chapter., to cause, permit, or maintain any property condition contrary to any provision of this Chapter. Consequently, the following maintenance requirements as to any property subject to the registration requirement of this Chapter.

B. Properties registered pursuant to this Chapter, including a property that has been issued a Notice of Default and deemed Abandoned, shall be maintained according to the following standards:

1. Any property subject to this Chapter must comply with the requirements of Oakland

Municipal Code Chapter 8.24 entitled, "Property Blight."

2. The property shall be kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building material, any accumulation of newspaper, circular, flyers, notices (except those required by federal, state or local law), discarded personal items including, but not limited to, furniture, mattresses, automobile tires, clothing, large and small appliances, printed material or any other items that give the appearance that the property is Abandoned.

3. 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 structure, Removal shall occur within 48 hours of placement on property.

4. Landscaping 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.

5. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch (unless applied in conjunction with reseeding of turf areas), indoor-outdoor carpet or any similar material.

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

7. Pools and spas shall be kept in working order so that water remains clear and free of pollutants and debris, or alternatively shall be drained and kept dry. In either case, properties with pools and/or spas must comply with the minimum security fencing requirement of State or other law.

8. Adherence to this section does not relieve the Responsible Party of any obligations set forth in any portion of the Oakland Municipal Code or in any covenants, conditions, and restrictions and/or homeowners' association rules and regulations which may apply to the property.

9. Utility services to residential property subject to registration shall not be terminated if the property is lawfully Occupied by tenants who are currently under a valid rental agreement with the Trustor. Nothing in this section precludes an Owner from recovering such costs from a tenant who is obligated to pay utility costs pursuant to a valid rental agreement.

10. Nothing in this Chapter relieves any Responsible Party of the need to obtain approvals, permits, and/or licenses as otherwise required by the Oakland Municipal Code or other governmental entities.

8.54.330 – Security Requirements

A. Properties subject to this Chapter, including a property that has been issued a Notice of

Default and deemed Abandoned, but not including Occupied properties that have been issued a Notice of Default but not yet foreclosed, 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/fences 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 windows(s).

C. 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. If the Local Property Management Company determines the property is not in compliance, it is the Responsible Party's responsibility, on its own or through the Local Property Management Company to bring the property into compliance.

D. The property shall be posted with the name and 24-hour contact telephone number of the Local Property Management Company or the Responsible Party if Local. The posting shall be no less than 18 inches by 24 inches, shall be of a front that is legible from a distance of 45 feet, and shall contain the following words, "THIS PROPERTY IS MANAGED BY _____" and "TO REPORT ANY PROBLEMS OR CONCERNS CALL _____."

E. 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 to the street. If no such area(s) exist, 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, or contained in, weather-resistant materials.

F. The Building Official shall have the authority to require additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or 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 better secure and/or reduce the visual decline of the property.

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

Article V. - Enforcement

8.54.400 - Compliance.

The Responsible Party of all properties subject to this Chapter shall comply fully and in all instances with the provisions of this Chapter and with all other applicable requirements of ordinances of the City, regulations of this Code, statutes of the State and the United States Code of Regulations, and decisions, rulings, and orders of courts of competent jurisdiction.

8.54.410 - Violations.

A. General. The failure of a Responsible Party to comply fully with the provisions of this Chapter shall be a separate violation which shall be immediately subject to abatement actions and fees, assessment of penalties and fines, and collection actions provided herein. Each and every day a violation of any provision of this Chapter exists shall constitute a separate and distinct offense. The Owner shall remain liable for any violation of this Chapter even though the Owner, by agreement, has imposed such duties on another individual, group, firm, or other entity.

B. Remedies. Remedies provided in this Chapter for violations are in addition to and do not supersede or limit any other remedies, whether civil or criminal, whether by federal, state or local law. The remedies provided for herein shall be cumulative and not exclusive.

C. Notification. The Owner shall be notified of a violation in accordance with the provisions for notification for abatement of violations, as set forth in Article II of Chapter 15.08 and shall have at least 30 days to correct prior to the assessment of any fines or penalties.

D. Defaulted Properties. If the property has received a Notice of Default, but has not been transferred to the Beneficiary or other person through Foreclosure, Deed in Lieu of Foreclosure, or other transfer, no fine or penalty may be imposed against the Beneficiary unless the Owner of Record has been first notified of the violation and given at least 30 days to cure and the Beneficiary has been notified that the Owner of Record failed to cure and has been given at least 30 days to cure. The 30 day notice period shall not apply if the Building Services Division determines that a specific condition of the Property threatens public health or safety.

E. Fines or Penalties. The City may assess penalties pursuant to O.M.C. Chapter 1.08, 1.12, and/or 1.16 as appropriate to the violation. A failure to register, or permitting blight or a nuisance to exist on any property subject to this Chapter is considered a major violation and subject to the penalties set out in Chapter 1.08.

8.54.420 - Assessments.

A. Penalties and Fines. , The assessment of penalties as set forth in Chapters 1.08 or 1.12, or fines as set forth in Section 2929.3 of the California Civil Code shall apply to the enforcement of the provisions of this Chapter. For properties cited pursuant to California Civil Code Section 2929.3 fines and penalties shall be assessed pursuant to that Code Section and the procedures and requirements of that Section and O.M.C 8.54.450.

B. Interest. Unpaid amounts shall be subject to the assessment of accruing interest as established in the master fee schedule.

C. Collection. The City may serve a demand (invoice) to the owner for payment of fees, costs, penalties, and accruing interest by mailing with regular postage to the address identified on the statement of registration, or when such statement has not been filed, to the address as it appears on the last equalized assessment roll of the Alameda County Assessor, or as otherwise may be known to the City. Whenever such amounts are not fully paid within 14 calendar days of service, the City may recover unpaid amounts by all available legal means including, but not limited to, civil and small claims court action, and may undertake collection by one or more of the following means:

1. Priority Lien. The City may file a Priority Lien with the Alameda County Clerk-Recorder for recordation on the property title which shall be remain as a financial encumbrance until such unpaid amounts with accrued interest have been fully paid. The amount of such lien shall draw interest thereon at a rate as established in the master fee schedule or such higher rate as may be established by the Alameda County Assessor for collection of municipal and county taxes from and after the date of service of such demand. The statute of limitations shall not run against the right of the City to enforce payment.

2. Special Assessment of the General Levy. The City may transmit such unpaid amounts with accrued interest to the Alameda County Assessor, who shall thereupon enter a special assessment of the general levy taxes on the County Assessment Book opposite the description of the particular lot or parcel of land, and such special assessment shall be collected together with all other taxes levied against the property. Such special assessment shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale, in the case of delinquency, as provided for all other municipal and county taxes against the property, and all laws applicable to the levy, collection, and enforcement of general property taxes are hereby made applicable to such special assessment.

3. Nuisance Abatement Lien. The City may file a Nuisance Abatement Lien with the Alameda County Clerk-Recorder for recordation on the property title which shall, from the date of recordation, have the force, effect, and priority of a judgment lien. Such nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.

D. Pursuant to California Civil Code Section 2929.45, the City of Oakland shall not:

1. Impose an assessment or lien unless the costs that constitute the assessment or lien have been adopted by the City Council at a public hearing; and

2. The assessment or lien to recover the costs of nuisance abatement measures taken by the City with regard to property that is subject to a Notice of Default, that is purchased at a Foreclosure sale, or that is acquired through Foreclosure under a mortgage or Deed of Trust, shall not exceed the actual and reasonable costs of nuisance abatement.

E. The City may recover from the Responsible Party the costs incurred for processing such demands and liens and non-sufficient funds checks, recording such liens, transferring such special assessments, providing notice for court, collection or foreclosure actions, for other recovery actions, and for reasonable attorneys' fees.

8.54.430 - Actual and Constructive Notice.

Pursuant to State law, actual notice of the assessment of fees, penalties, and fines shall be established on the date the City notifies the Owner of such assessment. Constructive notice of the pendency of a collection action for an assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder. A subsequent Owner of a property subject to this Chapter without actual or constructive notice of the assessment under this Chapter shall not be liable for such assessment.

8.54. 440 Additional Remedies

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

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 causes, permits, or maintains a violation of this Chapter as to that property, shall be guilty of a misdemeanor, and upon conviction thereof, shall of punished as provided in Chapter 1.28 of the Oakland Municipal Code.

C. This Chapter is intended to be cumulative to, and not in place of, other rights and remedies available to the City pursuant to the Oakland Municipal Code or available under state or federal law. The City Attorney or a duly authorized enforcement official may pursue any other right or remedy permitted by the Oakland Municipal Code, including, but not limited to, commencement of any civil action, or administration action to abate the condition of a property as a public nuisance.

D. In the event that the City takes administrative action to abate the condition of a property subject to the registration requirement contained in this Chapter, above and beyond the rights and remedies specified in Chapters 1.08, 1.12, 1.16 and 15.08 the following administrative penalties shall apply:

1. In each instance when a party becomes subject to a penalty specified in this section, a Building Official shall issue an order providing written notice of that party's obligation to make payment of said penalty. Each such order shall constitute a special assessment against the property in question having the same legal status as an order determining the cost of abatement of a public nuisance pursuant to the provisions of Chapter 15.08.

8.54.450 Alternative Monetary Penalties For Violations of California Civil Code Section 2929.3

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

B. The City may elect to impose monetary penalties on a legal owner, pursuant to California Civil Code Section 2929.3, if that legal owner fails to maintain Vacant residential property that is either

purchased at a Foreclosure sale or acquired through Foreclosure under a mortgage or Deed of Trust.

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

C. The City may impose a fine of up to One Thousand Dollars ($1,000.00) per day for each day that the legal owner fails to maintain the property as required by this Section, commencing on the day following the expiration of the period to remedy the violation, as established by the City in Subsection D.

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

2. Fines and penalties collected pursuant to this Section shall be directed toward local nuisance abatement programs.

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

4. Notwithstanding Subsection (C)(3) above, the rights and remedies provided in this Section are cumulative and in addition to any other rights and remedies provided by law.

D. If the City imposes a fine pursuant to this Section, the City shall give notice of the alleged violation to the Owner of Record. The notice shall include a description of the conditions that gave rise to the alleged violations, and state the City's intent to assess a civil fine if action to correct that violation is not corrected within a period of not less than 30 days.

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

2. If the violation(s) are not corrected after the City has mail the notice of violation pursuant to 8.54.340(D)(1), the Responsible Party or the Beneficiary and/or trustee as appropriate shall remedy the violations contained in the notice. All measures to remedy the violations contained in the notice shall comply with the Oakland Municipal Code.

3. The City may provide less than 30 days' notice to remedy a condition, if the City determines that a specific condition of the property threatens public health or safety and the

notice of violation states that there is a threat to public health or safety and lists the required time to correct the violation.

Article VI. - Appeal

8.54. 500 - Appeal.

The Responsible Party may appeal a notice of a violation or the assessment of fees for the abatement of a violation in accordance with the provisions for appeals of deteriorated conditions, as set forth in Article II of Chapter 15.08. Appeals of the assessment of penalties shall be in accordance with the provisions set forth in Chapter 1.08 or 1.12, as appropriate.

8.54.510 - Review of appeal.

The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitioners seeking judicial review of administrative determinations.

Article VII. - Miscellaneous

8.54.600 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.

8.54.610 Regulations

The City Administrator is authorized to promulgate regulations to further the intents and purposes of this Chapter not inconsistent with the Chapter.

8.54.620 Use of Fines and Penalties

Fines and Penalties collected pursuant to this section shall be used first for costs of administration of the provisions of this Chapter, to the extent that such costs cannot be covered by fee revenue. Any amounts remaining shall be deposited to the Affordable Housing Trust Fund provided for in Section 15.68.100 and shall be appropriated for Foreclosure prevention programs and such other purposes as permitted by Section 15.68.100, unless collected under state law or the Oakland Municipal Code. and required to be put towards a different purpose.

SECTION 3. Applicability

A. Authority

This ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

B. Effective Date

Upon final adoption or approval of a reconsideration by sufficient votes of the Council of the City of Oakland, this ordinance shall be effective on and after the day established in section 216 of the Charter of the City of Oakland.

C. Revenue Account

Registration Fees. Amounts collected from the existing and new registration fees shall be deposited in the special revenue Development Service Fund (2415), Code Enforcement Organization (84454), Miscellaneous Fines Account (45416), Project (to be determined), Development Permit and Inspection Program (NB31). Any fines or penalties collected pursuant to California Civil Code 2929.3 shall be deposited in the special revenue Development Service Fund (2415), Code Enforcement Organization (84454), Miscellaneous Fines Account (45416).

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 19 2012, 2012

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, AND PRESIDENT REID – 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: LaTonda Simmons

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date MAY 15 2012

Date of Attestation: June 26 2012

NOTICE AND DIGEST

AN ORDINANCE AMENDING AND RESTATING OAKLAND MUNICIPAL CODE CHAPTER 8.54 (THE FORECLOSED AND VACANT RESIDENTIAL BUILDING REGISTRATION PROGRAM) BY EXPANDING IT TO INCLUDE BOTH VACANT AND OCCUPIED RESIDENTIAL PROPERTIES AND MULTIPLE UNIT BUILDINGS TO THE FORECLOSED AND DEFAULTED RESIDENTIAL PROPERTY REGISTRATION PROGRAM, TO SET OUT MORE SPECIFIC MAINTENANCE AND SECURITY REQUIREMENTS AND TO PROVIDE FOR ABATEMENT OF BLIGHT AND NUISANCES AT SUCH PROPERTIES

This ordinance will expand the foreclosed and vacant registration program codified as Chapter 8.54 in the Oakland Municipal Code and require the registration of all defaulted (NOD) and foreclosed (REO) properties and the maintenance of vacant NOD properties by a "Responsible Party" which means the owner of the property, or the beneficiary and/or trustee pursuing foreclosure of a property subject to Chapter 8.54 secured by a mortgage, deed of trust or similar instrument. Responsible Party excludes the pre-foreclosure owner.