

ORDINANCE NO. 2755

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA AMENDING CHAPTER 8.59 (VACANT BUILDING SECURITY AND MAINTENANCE) AND CHAPTER 8.60 (FORECLOSURE OF RESIDENTIAL PROPERTY REGISTRATION) OF THE EL MONTE MUNICIPAL CODE, INCLUDING AMENDMENTS TO SECTIONS 8.59.092A AND 8.60.092A TO EXTEND BY AN ADDITIONAL TWO YEARS THE AUTOMATIC SUNSET CLAUSE APPLICABLE TO EL MONTE MUNICIPAL CODE CHAPTERS 8.59 AND MAINTENANCE AND 8.60, RESPECTIVELY

WHEREAS, the California housing market has shown only marginal improvement since the start of the 2008 national economic downturn and the related housing market collapse; and

WHEREAS, this prolonged downturn, aggravated by very high rates of unemployment, especially within the City of El Monte, continues to keep the number of foreclosed properties in the City of El Monte high as unemployed households struggle to make monthly mortgage payments; and

WHEREAS, such homes are frequently acquired by banks, financial institutions and large real estate conglomerates that have little to no connection to the communities in which they own property; and

WHEREAS, many of these foreclosed homes are vacated prior to the conclusion of the foreclosure process. Homes sit empty for months, and may even remain vacant for years, awaiting the final foreclosure sale; often creating an attractive public nuisance. Some homes are in violation of multiple aspects of City building codes. As the mortgagees are often times large financial institution located out of state, enforcement of building code violations poses an immense challenge; and

WHEREAS, City code violations include, and may in the future foreseeably include, among other things multiple violations, unoccupied buildings susceptible to vandalism and/or open structures rendering them unsafe and dangerous, yards full of litter and trash, unlocked houses, overgrown grass and bushes, and unsecured swimming pools that are not only a threat to children but become breeding grounds for infectious insects such as mosquitoes; and

WHEREAS, this problem exists not only in El Monte and elsewhere in California but also in many other States. Banks and other financial institutions have refused to maintain properties, and City building inspectors have great difficulty in determining who the owners are and how to contact them to correct code violations; and

WHEREAS, at its meeting of September 2, 2008, the El Monte City Council ("City Council") adopted Urgency Ordinance No. 2730 which created a new Chapter 8.59 (Vacant Building Security and Maintenance) and a new Chapter 8.60 (Foreclosure of Residential Property Registration); and

WHEREAS, through the adoption of Chapter 8.59 and Chapter 8.60, the City implemented two new programs designed to prevent and address the adverse impacts large numbers of vacant properties have the potential to create; and

WHEREAS, Sections 8.59.092A and 8.60.092A of Chapters 8.59 and 8.60, respectively, provide that the provisions of Chapter 8.59 and 8.60, respectively, will expire automatically upon the second anniversary of the adoption of Ordinance No. 2730, unless repealed or extended by a subsequent City Council Ordinance; and

WHEREAS, the inventory of vacant foreclosed properties within the City of El Monte remains high in light of the prolonged nature of the current economic downturn; and

WHEREAS, according to most economic forecasts there is little indication that the adverse economic conditions that have led to historically high foreclosure rates will fully abate anytime prior the second half of the year 2012.

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

SECTION 1. The information set forth in the Recital paragraphs of this Ordinance is true and correct.

SECTION 2. The City Council has conducted a public hearing on July 20, 2010 to consider the adoption of this Ordinance, including the extension of the sunset provisions of Chapters 8.59 and 8.60 of the El Monte Municipal Code. After the conclusion of the July 20, 2010 public hearing, the City Council approved the First Reading of this Ordinance. The Second Reading of this Ordinance was approved at the City Council at its regular meeting of August 3, 2010.

SECTION 3.

The City Council finds as follows:

A. When the owner of a vacant building fails to actively maintain and manage the building, the building can become a major cause of blight in both residential and nonresidential neighborhoods. Vacant buildings that are boarded, substandard or unkempt properties, and long-term vacancies discourage economic development and regard appreciation of property values.

B. It is a responsibility of property ownership to prevent the condition of unoccupied property from becoming a burden to the neighborhood and community and a threat to the public health, safety, or welfare.

C. One vacant building in a neighborhood that is not actively monitored by the owner for maintenance and appropriate security can be the core and cause of spreading blight.

D. Owners of multiple buildings, either concurrently or serially, that are vacant and a blight to the community are a significant problem in the City. Owners of multiple buildings who fail to correct deficiencies and blighted conditions contribute to the decline of neighborhoods to a greater extent than owners who own only one building. It is in the interest of the welfare of neighborhoods that owners of multiple properties who fail to maintain properties and vacant and blighted buildings be subject to imposition of higher administrative penalties in order to encourage these owners to correct violations of proposed Chapter 8.59 or proposed Chapter 8.60, in a prompt manner.

E. Extension of the sunset provisions of Chapter 8.59 and 8.60 by an additional two years is in the furtherance of the police power of the City to protect the health, safety and welfare of the public. The public health, safety and welfare will be protected by the continuation of the programs established under Chapters 8.59 and 8.60 of the El Monte Municipal due to the prolonged nature of the downturn in the California housing market and the resulting large inventory of vacant properties that remain in the City of El Monte. Without the legal tools provided under Chapters 8.59 and 8.60, the City would not be able to address a number of problems and potential dangers to the community associated with the large inventory of unoccupied residential and other structures in the City which are the result of mortgage lien foreclosure proceedings or the inability of homeowners or other property owners to pay their lenders in a timely fashion and also maintain their property. Accordingly, the City Council hereby finds and determines that the extension of the original two-year sunset period applicable to Chapters 8.59 and 8.60 is a necessary and reasonable response to the ongoing adverse economic conditions that continues to plague the State of California and the City of El Monte.

SECTION 4. Subsection A of Section 8.59.092 (Sunset) of Chapter 8.59 (Vacant Building Security and Maintenance) of the El Monte Municipal Code is hereby amended to read as follows:

- A. Subject to the provisions of Section 8.59.092B, this Chapter of the El Monte Municipal Code shall be of no further force or effect on the fourth anniversary following the September 2, 2008 adoption date of City Council Urgency Ordinance No. 2730 which initially added this Chapter to El Monte Municipal Code, unless prior to that date, the City Council enacts a separate ordinance which either repeals this Section 8.59.092, or amends this Section 8.59.092 to further extend the effectiveness of this Chapter to a new date.

[EDITOR'S NOTE: By adoption of City Council Ordinance No. 2755, the City Council extended the initial two year sunset clause applicable to Chapter 8.59 by an additional two (2) years. Accordingly, unless the revised sunset period set forth under amended Section 8.59.092A is repealed or further extended by a separate City Council ordinance, the sunset period applicable to Chapter 8.59 will now expire automatically on September 2, 2012, the 4th anniversary of the original September 2, 2008 adoption date of Urgency Ordinance No. 2730 which initially added Chapter 8.59 to the El Monte Municipal Code.]

SECTION 5. The definition of the word "beneficiary" as set forth in Section 8.60.020 is hereby amended to read as follows:

"Beneficiary" means a lender under a promissory note to pay money secured by a deed of trust on property. The word "beneficiary" as used in this Chapter 8.60 means and includes any assignee or successor to such beneficiary, whether such assignee or successor acquires its interest in the beneficiary's promissory note either before a notice of default is recorded on the property securing the obligation payable to the beneficiary or after a notice of default is recorded. In the event that a property may provide security for the loan or obligation of more than one beneficiary, the beneficiary who causes its notice of default to be recorded shall be responsible for registering the property as set forth in this Chapter 8.60."

SECTION 6. Subsection B of Section 8.60.030 (Registration) is hereby amended to read as follows:

- B. The beneficiary, or its agent shall register the property with the Chief Building Official, on forms provided by the City within ten (10) days from the earlier of the following dates: (i) the date a notice of default is recorded on a property; or (ii) the date of a default inspection which indicates that the property is vacant or abandoned. The provisions of subsection (i) of the preceding sentence of this Section 8.60.030B shall apply to each property for which a notice of default is recorded on or after July 31, 2010.

SECTION 7. The text of Section 8.60.040 (Maintenance Requirements) of the El Monte Municipal Code is hereby amended to read as follows:

8.60.040 Maintenance Requirements.

- A. Properties which are abandoned or vacant shall be, in comparison to the neighborhood standard, maintained by the beneficiary and kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including but not limited to furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned. The beneficiary shall maintain such property 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. In general, the maintenance of abandoned or vacant property by the beneficiary shall comply with the standards set forth in Section 8.59.040 and HUD Mortgagee Letter 2007-03, dated January 25, 2007, or such other standard as may hereafter be ordered in writing addressed to the beneficiary by the Chief Building Official. Adherence to the maintenance and monitoring standard set forth in this section does not relieve the beneficiary/trustee or property owner of any obligations set forth in any covenants, conditions and restrictions and/or homeowners' association rules and regulations which may apply to the property.
- B. Each property which is acquired by a beneficiary following the recordation of a notice of default, whether acquired by such beneficiary by foreclosure, deed in lieu of foreclosure or judgment of foreclosure, shall be maintained by the beneficiary so as not to constitute a public nuisance under Chapter 8.44 of the El Monte Municipal Code and other applicable laws, for so long a period of time as the beneficiary may own such property.

SECTION 8. Chapter 8.60 of the El Monte Municipal Code is hereby amended by the addition of a new Section 8.60.046 which reads as follows:

8.60.046 Property Inspection Report Upon Sale or Transfer of Property.

- A. Property which is acquired by a beneficiary following the recordation of a notice of default, whether acquired by such beneficiary by foreclosure, deed in lieu of foreclosure or judgment of foreclosure, shall also be subject to compliance with the provisions of El Monte Municipal Code Section 17.16.040, upon the sale, exchange, transfer or other conveyance of such property by the beneficiary to a third person.
- B. Property which is vacant or abandoned at the time of acquisition by a beneficiary, whether acquired by such beneficiary by foreclosure, deed in lieu of foreclosure or judgment of foreclosure shall also be subject to compliance with the provisions of El Monte Municipal

Code Section 17.16.040, prior to the earlier date of either: (i) re-occupancy of such property by any tenant of the beneficiary; or (ii) sale, exchange, transfer or other conveyance of such property by the beneficiary to a third person.

- C. Property which is occupied by either the trustor or a tenant of the trustor at the time of acquisition by a beneficiary, whether acquired by such beneficiary by foreclosure, deed in lieu of foreclosure or judgment of foreclosure, shall also be subject to compliance with the provisions of El Monte Municipal Code Section 17.16.040 prior to the earlier date of either: (i) the re-occupancy of such property by any successor tenant to the trustor or such other successor tenant to the tenant in possession of the property at the time of the beneficiary's acquisition of the property; or (ii) sale, exchange, transfer or other conveyance of such property by the beneficiary to a third person.

SECTION 9. Chapter 8.60 of the El Monte Municipal Code is hereby amended by the addition of a new Section 8.60.047 which reads as follows:

8.60.047 Administrative Memorandum With a Beneficiary

Upon prior written application in a form approved by the City Manager, a beneficiary or a trustee or agent on behalf of one or more beneficiaries, may enter into a memorandum of agreement with the City for administration of the provisions of this Chapter 8.60 to one or more properties which are either owned by such beneficiary (or represented group of such beneficiaries) or for which the beneficiary has caused to be recorded a notice of default. Such a memorandum shall have a duration of not more than twelve (12) months, unless renewed or extended by the beneficiary and the City and shall contain other provisions reasonably acceptable to the City Manager. Each such memorandum of agreement shall reference this Section 8.60.047, and shall be subject to the approval by the City Council in the sole and absolute discretion of the City Council.

SECTION 10. Chapter 8.60 of the El Monte Municipal Code is hereby amended by the addition of a new Section 8.60.048 which reads as follows:

8.60.048 Notice by Beneficiary to City of Disposition of Registered Property

- A. Within ten (10) days following the release of a notice of default and the reinstatement of the loan of the trustor, the beneficiary or its agent shall give the City written notice of such release and reinstatement.
- B. Within ten (10) days following the sale, transfer or other conveyance to a third person of a property registered with the City under this Chapter 8.60, the beneficiary or its agent, shall give the City written notice of such sale, transfer or other conveyance together with current contact information for such *bona fide*

purchaser/successor-in-interest to the beneficiary in such property.

SECTION 11. Chapter 8.60 of the El Monte Municipal Code is hereby amended by the addition of a new Section 8.60.049 which reads as follows:

8.60.049 Re-Registration of Property Subject to this Chapter

- A. The beneficiary or its agent shall annually renew a registration of each property which the beneficiary has previously registered with the City under this Chapter 8.60, and in which such beneficiary retains either an equitable or legal interest as of the first anniversary of the registration of such property with the City. The beneficiary or its agent shall re-register the property on forms provided by the City.
- B. The provisions of this Section 8.60.049, shall apply to each property for which a notice of default was recorded on or after October 1, 2009.

SECTION 12. Section 8.60.060 of the El Monte Municipal Code is hereby amended to read as follows:

8.60.060 Fees.

Fees and charges for the administration of the regulatory program established by this Chapter 8.60 shall be set by resolution of the City Council including without limitation the fee for registering with the City a property for which a notice of default has been recorded, and the separate fee for registering with the City a property which either the beneficiary or the City has found to be vacant or abandoned.

SECTION 13. Chapter 8.60 of the El Monte Municipal Code is hereby amended to add a new Section 8.60.071 which reads as follows:

8.60.071 Fine for Failure to Timely Register a Property With the City

- A. Notwithstanding any other provision of this Chapter or Chapter 1.18 or Chapter 1.19 to the contrary, the City may impose a fine on a beneficiary for its failure to timely register a property with the City under this Chapter 8.60 in the following amounts:
 - (i) Two Hundred and Fifty Dollars (\$250) for the first violation in the 12 months preceding the date of such violation;
 - (ii) Five Hundred Dollars (\$500) for the second violation in the 12 months preceding the date of such violation;
 - (iii) One Thousand Dollars (\$1,000) for the third and each subsequent violation in the 12 months preceding the date of such violation.

B. The special fine amount provisions of this Section 8.60.071 shall be applicable to citations issued on or after September 30, 2010, by the City under Chapter 1.18 or Chapter 1.19 of the Code to a beneficiary for a violation of this Chapter 8.60.

SECTION 14. Chapter 8.60 of the El Monte Municipal Code is hereby amended to add a new Section 8.60.072 which reads as follows:

8.60.072 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 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 Section 8.60.030 and 8.60.049.

B. Upon the 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 this Chapter 8.60 against one or more beneficiaries who have not separately recorded a notice of default against the property.

SECTION 15. Subsection A of Section 8.60.092 (Sunset) of Chapter 8.60 (Foreclosure of Residential Property Registration) of the El Monte Municipal Code is hereby amended to read as follows:

A. Subject to the provisions of Section 8.60.092B, this Chapter of the El Monte Municipal Code shall be of no further force or effect on the fourth anniversary following the September 2, 2008 adoption date of City Council Urgency Ordinance No. 2730 which initially added this Chapter to El Monte Municipal Code, unless prior to that date, the City Council enacts a separate ordinance which either repeals this Section 8.60.092, or amends this Section 8.60.092 to further extend the effectiveness of this Chapter to a new date.

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SECTION 16. Except as otherwise amended pursuant to Sections 4 through 14 of this Ordinance, the provisions of Chapters 8.59 and 8.60 as originally adopted by way

of City Council Urgency Ordinance No. 2730 shall remain in full force and effect. The City Council further finds that many of the urgency conditions supporting the adoption of Urgency Ordinance No. 2730 persist in that the prolonged nature of the national economic downturn, aggravated by high levels of unemployment in the State of California and in the City of El Monte, continue to cause an historically high rate of residential mortgage foreclosures and force many families to move out of their homes due to the inability to meet monthly mortgage payment obligations. This, in turn, has lead to an unusually high inventory of vacant residential housing within the City of El Monte meriting continued application of the programs established under Chapters 8.59 and 8.60 of the El Monte Municipal Code.

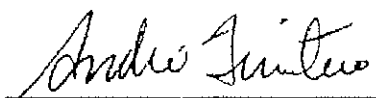
SECTION 17. Inconsistent Provisions. Any provision of the El Monte Municipal Code or appendices thereto inconsistent with the provisions of one or more Sections of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

SECTION 18. CEQA Exemption. The adoption of this Ordinance and the implementation of the regulatory programs authorized under Sections 4 through 12 of this Ordinance, do not require further review under the California Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061, in view of the fact that the regulatory programs are hereby enacted, apply to existing structures and buildings and are intended to provide for continuous and appropriate maintenance and protection of such structure and buildings for so long as the structures and buildings may remain unoccupied or vacant.

SECTION 19. Constitutionality. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a 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 passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

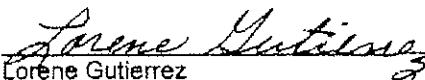
SECTION 20. Effective Date. The Mayor shall sign and the City Clerk attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

PASSED, APPROVED AND ADOPTED THIS 3rd day of August, 2010.



Andre A. Quintero
Mayor of the City of El Monte

ATTEST:



Lorene Gutierrez
City Clerk of the City of El Monte

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF EL MONTE)


I, Lorene Gutierrez, City Clerk of the City of El Monte, do hereby certify that the above and foregoing Ordinance No. 2755 was passed, approved, and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a meeting of said City held on the 3rd day of August, 2010, and that said Ordinance was adopted by the following votes to wit:

AYES: Mayor Quintero, Mayor Pro-Tem Wallach, Councilman Gomez,
 Councilwoman Ishigaki and Councilwoman Macias

NOES: None

ABSTAIN: None

ABSENT: None


Lorene Gutierrez
City Clerk of the City of El Monte