

ORDINANCE NO _____

AN ORDINANCE OF THE CITY OF INDIO ADOPTING CHAPTER 95D, SECTIONS 95D.101-95D.111 OF TITLE IX OF THE MUNICIPAL CODE PERTAINING TO THE REGISTRATION AND MAINTENANCE OF ABANDONED PROPERTIES.

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

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

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

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

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

WHEREAS, in many instances the lender and trustees fail to adequately maintain and secure these vacant residences; and

WHEREAS, the City has an obligation to preserve the health, safety and welfare of residents and the community, and to the extent possible, protect neighborhoods from declining property values, aesthetic decay, and loss of character.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIO HEREBY ORDAINS AS FOLLOWS:

Section 1: Chapter Adopted

Chapter 95D, sections 95D.101 – 95D.111 of Title IX of the Code of Indio is hereby adopted as follows:

Chapter 95D

Registration and Maintenance of Abandoned Properties

Sections:

95D.101	Purpose
95D.102	Definitions
95D.103	Duty to Record Assignment of Rents
95D.104	Registration
95D.105	Maintenance Requirements
95D.106	Security Requirements
95D.107	Additional Authority
95D.108	Fees
95D.109	Enforcement
95D.110	Appeals
95D.111	Severability

95D.101 PURPOSE

It is the intent of the City Council, through the adoption of this chapter, to establish a mechanism to protect residential neighborhoods from becoming blighted through the lack of maintenance and security of abandoned properties; to establish an abandoned property registration program and to set forth guidelines for the maintenance of abandoned properties.

95D.102 DEFINITIONS

Certain words and phrases in this chapter are defined, when used herein, as follows:

ABANDONED. Any building, structure or real property that is vacant or occupied by a person without a legal right of occupancy, and subject to a current Notice of Default and/or Notice of Trustee's Sale, pending Tax 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.

ABATEMENT ORDER. A Hearing Officer's "Order to Abate" issued pursuant to section 95A.113 or a Nuisance Abatement Appeals Board's written final order decision issued pursuant to section 95A.120, if any.

ACCESSIBLE PROPERTY. Real property that is accessible to the public, either, in general or through a open and unsecured door, window, gate, fence, wall, etc.

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

ADMINISTRATIVE PENALTY PAYMENT DUE DATE. The date that is the eleventh (11th) day after the issuance of a Hearing Officer's issuance of a written "Order to Abate" pursuant to section 95A.113, or the Nuisance Abatement Appeals Board's issuance of a final order decision pursuant to section 95A.120, if any.

AGREEMENT. Any written instrument that transfers or conveys title to residential real property from one owner to another after a sale, trade, transfer or exchange.

ASSIGNMENT OF RENTS. An instrument that transfers the beneficial interest under a deed of trust from one lender or entity to another.

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

BUYER. Any person, partnership, association, corporation, fiduciary or other legal entity that agrees to transfer anything of value in consideration for real property *via* an “agreement” as that term is defined in this Section 95D.102.

DANGEROUS BUILDING. Any building or structure reasonably deemed by qualified City staff to represent a violation of any provision specified in Code of Indio chapter 95B.

DAYS. Calendar days.

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

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

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

DISTRESSED. Any building, structure or real property that is subject to a current Notice of Default and/or Notice of Trustee’s Sale, pending Tax 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 of occupancy.

ENFORCEMENT OFFICIAL. The City Manager, the Building Official, the Chief of Police and/or any employee or agent of the City of Indio designated and/or charged with enforcing the Code of Indio including but not limited to applicable codes adopted by reference therein.

EVIDENCE OF VACANCY. Any real property condition that independently, or in the context of the totality of circumstances relevant to that real property would lead a reasonable enforcement official to believe that a property is vacant or occupied by a person without a legal right of occupancy. Such real property conditions include but are not limited to: overgrown or dead vegetation; accumulation of newspapers, circulars, flyers or mail; past due utility notices or disconnected utilities; accumulation of trash, junk or debris; the absence of window coverings such as curtains, blinds or shutters; the absence of furnishings or personal items consistent with residential habitation; and/or statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

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

LOCAL. Within forty (40) driving miles of the building, structure or real property in question.

NEIGHBORHOOD STANDARD. The condition of real property that prevails in and through the neighborhood where an abandoned building, structure or real property is located. When determining the neighborhood standard no abandoned or distressed building, structure or real property shall be considered.

NOTICE OF DEFAULT. A recorded instrument that reflects and provides notice that a default has taken place with respect to a deed of trust, and that a beneficiary intends to proceed with a trustee's sale.

OUT OF AREA. In excess of forty (40) road or driving miles of the subject property.

OWNER. Any person, partnership, association, corporation, fiduciary or other legal entity having a legal or equitable title or any interest in real property.

OWNER OF RECORD. The person holding recorded title to the real property in question at any point in time when Official Records are produced by the Riverside County Recorder's Office.

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

RESIDENTIAL BUILDING. Any improved real property, or portion thereof, designed or permitted to be used for dwelling purposes, including buildings and structures located on such improved real property. This includes any real property being offered under any circumstances for sale, trade, transfer, or exchange as "residential," whether or not said property is legally permitted and zoned for such use.

SECURING. Such measures as may be directed by an enforcement official that assist in rendering real property inaccessible to unauthorized persons, including but not limited to repairing fences and walls, chaining/pad locking gates, the repairing or boarding doors, windows or other openings. Such measures shall be implemented in conformance with all applicable standards of the United States Department of Housing and Urban Development.

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

TRUSTOR. Any owner/borrower identified in a deed of trust, who transfers an interest in real property to a trustee as security for payment of a debt by that owner/trustor.

VACANT. Any building, structure or real property that is unoccupied or occupied by a person without a legal right of occupancy.

95D.103 DUTY TO RECORD ASSIGNMENT OF RENTS

Within ten (10) days of a property transaction involving a change in the identity of an owner or the owner of record, or alternatively a transfer/assignment of a loan or deed of trust secured by residential property, each beneficiary and trustee engaged in said transaction or transfer/assignment shall record, *via* the Riverside County Recorder's Office, an Assignment of Rents, or similar instrument. This instrument shall reflect 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.

95D.104 REGISTRATION

- (A) Each beneficiary and trustee, who holds a deed of trust on a property located within the City of Indio, shall perform an inspection of the property in question prior to recording a Notice of Default or similar instrument with the Riverside County Recorders Office. If the property is found to be vacant or shows evidence of vacancy, as defined by the chapter, it is hereby deemed to be abandoned.
- (B) Within ten (10) days of identification of any abandoned property, the beneficiary and trustee must register the property with the City of Indio Police Department on specified forms.
- (C) If the property is occupied but distressed, the trustee and beneficiary or a designee shall inspect the property on a monthly basis until:
 - (1) the trustor or another party remedies the default; or
 - (2) the property is found to be vacant or shows evidence of vacancy, deemed abandoned and rendered subject to section 95D.104(B).
- (D) The registration pursuant to section 95D.104(B) shall contain the identity of the beneficiary and trustee, the direct mailing address of the beneficiary and trustee and, in the case of a corporate or out of area beneficiary or trustee, the local property management company, if any, responsible for the security, maintenance and marketing of the property in question.
- (E) The registration pursuant to section 95D.104(B) shall be renewed annually.
- (F) An annual registration fee, adopted in conformance with Section 95D.108, shall accompany the submission of each registration form. The fee and registration shall be valid for one (1) year from the date of registration. Registration fees will not be prorated.
- (G) This section shall also apply to properties that have been the subject of a foreclosure sale wherein title has been transferred to the beneficiary of a deed of trust involved in the foreclosure, and to any properties transferred under a deed in lieu of foreclosure or sale.

- (H) Properties subject to this chapter shall remain subject to the annual registration requirement, security and maintenance standards of this chapter as long as they remain vacant.
- (I) Any person, partnership, association, corporation, fiduciary or other legal entity that has registered a property under this chapter must make a written report to the Indio Police Department of any change of information contained in the registration within ten (10) days of the change.
- (J) The duties/obligations specified in this section 95D.104 shall be joint and several among and between all trustees and beneficiaries and their respective agents.

95D.105 MAINTENANCE REQUIREMENTS

It is declared a public nuisance for any person, partnership, association, corporation, fiduciary or other legal entity, that owns, leases, occupies, controls or manages any property subject to the to the registration requirement contained in section 95D.104, 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 to the registration requirement contained in section 95D.104 are adopted.

- (A) Any property subject to this section must comply with the requirements of Indio Municipal Code chapter 95A.
- (B) In addition, the property shall be kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper, circular, flyers, notices (except those required by 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.
- (C) The property shall be maintained free of graffiti, tagging or similar marking. Any removal or painting over of graffiti shall be with an exterior grade paint that matches the color of the exterior of the structure.
- (D) Visible front and side yards shall be landscaped and maintained to the neighborhood standard.
- (E) Landscaping includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation.
- (F) Landscaping does not include weeds, gravel, broken concrete, asphalt, plastic sheeting, mulch, indoor-outdoor carpet or any similar material.
- (G) 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 requirements of the State of California.

- (H) Adherence to this section does not relieve the beneficiary/trustee or property owner of obligations set forth in any Covenants Conditions and Restrictions and/or Home Owners Association rules and regulations which may apply to the property.
- (I) The duties/obligations specified in this section 95D.105 shall be joint and several among and between all trustees and beneficiaries and their respective agents.

The sole exception to these maintenance requirements shall, within the sole reasonable discretion of a duly authorized enforcement official, apply to property subject to the registration requirement contained in section 95D.104 that is under construction and/or repair, not less than three (3) business days per week, undertaken in compliance with all applicable law including but not limited to City permitting requirements.

95D.106 SECURITY REQUIREMENTS

- (A) Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- (B) Secure manner includes but is not limited to closing and locking of windows, doors (walk-through, sliding and garage) gates and any other opening that may allow access to the interior of the property and or structure(s). In the case of broken windows securing means re-glazing or boarding the window.
- (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.
- (D) The property shall be posted with the name and 24-hour contact phone number of the local property management company. The posting shall be no less than 18" X 24", shall be of a font that is legible from a distance of forty-five (45) feet, and shall contain the following verbiage: "THIS PROPERTY MANAGED BY _____," and "TO REPORT PROBLEMS OR CONCERNS CALL (name and phone number)".
- (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 from the street. If no such area exists, the posting shall be on a stake of sufficient size to support the posting, in a location that is visible from the street to the front of the property, and to the extent possible, not readily accessible to potential vandalism. Exterior posting must be constructed of, and printed with weather resistant materials.
- (F) The local property management company shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this chapter. If the property management company determines the property is not in compliance, it is the company's responsibility to bring the property into compliance.

- (G) The duties/obligations specified in this section 95D.106 shall be joint and several among and between all trustees and beneficiaries and their respective agents.

95D.107 ADDITIONAL AUTHORITY

In addition to the enforcement remedies established in this Chapter, the City shall have the authority to require the beneficiary, trustee, owner or owner of record of any property affected by this section, to implement additional maintenance and/or security measures including but not limited to, securing any and all doors, windows or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard or other measures as may be reasonably required to secure and reduce the visual decline of the property.

95D.108 FEES

The fee for registering and re-registering an abandoned property shall be set, from time to time, by resolution of the City Council. The amount of the fee charges shall not exceed the cost of administering the provisions of this chapter.

95D.109 ENFORCEMENT

- 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 the to the registration requirement contained in section 95D.104, 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 be punished as provided in Chapter 10 of this Code.
- C. This section 95D.109 is intended to be cumulative to, and not in place of, other rights and remedies available to the City pursuant to the Code of Indio. Above and beyond the violation and penalty specified in this section 95D.109, the City Attorney or a duly authorized Enforcement Official may pursue any other right or remedy permitted by the Code of Indio, including but not limited to commencement of any civil action, or administrative action to abate the condition of a property as a public nuisance pursuant to Chapter 95A.
- D. In the event that the City takes administrative action to abate the condition of a property subject to the to the registration requirement contained in section 95D.104, above and beyond the rights and remedies specified in Chapter 95A, the following administrative penalties shall apply.
 - a. On the administrative penalty due date, each party subject to an abatement order shall pay an administrative penalty of one thousand dollars (\$1,000.00).
 - b. In the event that a violation of this chapter addressed by an abatement order has not been abated, cured, remedied and/or eliminated to the reasonable satisfaction of a duly authorized enforcement official by the

thirtieth (30th) day after the administrative penalty due date, each party subject to said abatement order shall pay a supplemental administrative penalty of five thousand dollars (\$5,000.00).

- c. In the event that a violation of this chapter addressed by an abatement order has not been abated, cured, remedied and/or eliminated to the reasonable satisfaction of a duly authorized enforcement official by the sixtieth (60th) day after the administrative penalty due date, each party subject to said abatement order shall pay a second supplemental administrative penalty of twenty-five thousand dollars (\$25,000.00).
- E. In each instance when a party becomes subject to an administrative penalty specified in section 95D.109D, an enforcement official shall issue an order providing written notice of that party's obligation to make payment of said administrative 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 the provisions of section 95A.122.
- F. In each instance when a party becomes subject to an administrative penalty specified in section 95D.109D, and the order providing for said administrative penalty issues when that party is either seeking to perfect its interest in the subject property subsequent to the recordation of a notice of default, or is the property's owner of record, that party is not relieved of its obligation to pay any administrative penalty based upon the sale of the property in question to another.

95D.110 APPEALS

Any person aggrieved by any of the requirements of this chapter may appeal a determination made hereunder in the manner specified with respect to appeals under Chapters 11 and 95A of the Code of Indio.

95D.111 SEVERABILITY

If any section or provision of this chapter is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this chapter shall remain valid. The City Council hereby declares that it would have adopted this chapter, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened *via* legislation.

Section 2:

The City Council finds that the above recitals are true and correct, and constitute the findings of the City Council in this matter.

Section 3:

The City Clerk shall certify to the passage and adoption of this ordinance and shall cause a summary of same to be published once in the Desert Sun, a newspaper of general circulation, printed, published and circulated within the City of Indio and the same shall be in force and effect thirty days after its adoption.

PASSED, APPROVED, AND ADOPTED this _____ day of February, 2008, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

LUPE RAMOS-WATSON, MAYOR
City of Indio, California

ATTEST:

CYNTHIA HERNANDEZ
City Clerk, CMC