

**ORDINANCE NO. 727
CHAPTER 8 BUILDINGS AND BUILDING REGULATIONS**

ORDINANCE AMENDMENT – CHAPTER 8, BUILDINGS AND BUILDING REGULATIONS

The proposed amendment would remove potentially burdensome requirements that may affect home sales.

Assistant City Manager Adam Zettel indicated further talks with local real estate related groups had taken place and all groups agreed on the language before Council this evening.

Mayor Pro-Tem Popovitch indicated she had heard concerns that this ordinance could affect rental properties. Assistant City Manager Zettel indicated that it is not intended to affect rental properties in the normal course of business.

A public hearing was conducted to receive citizen comment regarding the proposed amendment to Chapter 8, Buildings and Building Regulations, Sections 8-162, 8-163, 8-168 and 8-174 of the Code of Ordinances of the City of Owosso, Michigan.

The following people commented regarding the proposed amendment:

Jeff McIntyre, president of the Shiawassee Association of Realtors, indicated that if the City felt such an ordinance must be put in place the organization could support the wording proposed this evening. He further indicated the group would like to continue to keep the lines of communication open regarding this ordinance and any other potential ordinances targeting real estate.

Jerry Meyer, representative of the Home Builders of Shiawassee County, thanked all the groups involved for working together to create a fair ordinance. He said that the organization supported the ordinance as written and he hoped the City would keep the lines of communication open as the ordinance is implemented.

Councilperson Bailey inquired how local realtors would be informed of the ordinance. Mr. McIntyre indicated he would distribute the information at the next realtors meeting.

Councilperson Erfourth expressed numerous concerns with the ordinance including whether it would affect snow birds, noting that vacancy was required for 180 consecutive days to trigger the ordinance, the cost to potential buyers, consequences for non-compliance, and his feeling the ordinance would not catch land contract deals.

Motion by Councilperson Erfourth to note that vacancy would be required for 180 consecutive days to trigger the ordinance.

Motion supported by Councilperson Fox.

City Attorney William C. Brown noted the amendment was not necessary as the definitions defined days as consecutive days.

There was discussion regarding Councilperson Erfourth's concerns. Members noted that while the ordinance was not perfect it would provide the City with another tool to prevent the deterioration of the housing stock. Further it was noted that the ordinance would not apply to snow birds and that maintenance of vacant/abandoned homes was required. There was indication that there was support for some of Councilperson Erfourth's concerns and feedback from local real estate organizations was desired in order to better fight blight within the City:

Whereas, the Council, after due and legal notice, has met and having heard all interested parties, motion by Councilperson Fox that the following ordinance be adopted:

ORDINANCE NO. 727

**AN ORDINANCE TO REQUIRE ABANDONED OR FORECLOSED PROPERTY
REGISTRATION AND MAINTENANCE**

AN ORDINANCE to amend Sections 8-162, 8-163, 8-168 and 8-174 of Chapter 8, Buildings and Building Regulations, to remove potentially burdensome requirements that may affect home sales.

WHEREAS, the City of Owosso has adopted an ordinance requiring the registration and inspection of abandoned and foreclosed homes; and

WHEREAS, it has come to light that some requirements put forth by this ordinance may have the unintended consequence of squelching home sales; and

WHEREAS, the City is desirous of a solution that does not obstruct home sales but captures the intent of the original ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Owosso, Michigan that all foreclosed and abandoned homes in the City of Owosso be registered in accordance with Article VIII, *Registering Abandoned and Foreclosed Homes*, of Chapter 8, Buildings and Building Regulations, as follows:

THE CITY OF OWOSSO ORDAINS:

SECTION 1. Short Title.

This Ordinance shall be known and cited as the *City of Owosso Abandoned or Foreclosed Property Registration and Maintenance Ordinance*.

SECTION 2. Secs 8-160 through 8-176 shall read as follows:

Sec. 8-160. Purpose.

It is the purpose and intent of the city of Owosso, through the adoption of this article, to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

Sec. 8-161. Definitions.

For the purpose of this article, certain words and phrases are defined as follows:

Abandoned means a property that is vacant and is under a current complaint for foreclosure or notice of foreclosure and/or notice of trustee's sale, pending tax sale, and/or properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

Accessible property means a property that is accessible through a compromised/breached gate, fence, wall, etc.

Accessible structure means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Agreement means any agreement or written instrument which provides that title to residential property shall be transferred or conveyed from one owner to another owner after the sale, trade, transfer, or exchange.

Assignment of rents means an instrument that transfers the beneficial interest under a mortgage from one lender/entity to another.

Beneficiary means a lender under a note secured by a mortgage.

Buyer means any person, co-partnership, association, corporation, or fiduciary who agrees to transfer anything of value in consideration for property described in an agreement of sale, as defined in this section.

Dangerous building means any building/structure that is in violation of any condition referenced in chapter 8 of this Code.

Days means consecutive calendar days.

Deed in lieu of foreclosure/sale means a recorded document that transfers ownership of a property from the trustor to the holder of a mortgage upon consent of the beneficiary of the mortgage of a deed from mortgagor to mortgagee.

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

Distressed means a property that is under a current notice of default and/or notice of trustee's sale and/or pending tax assessor's lien sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary/trustee via a deed in lieu of foreclosure/sale.

Evidence of vacancy means any condition that on its own or combined with other conditions present would lead a reasonable person to believe that the property is vacant. 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, statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

Foreclosure means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the trustor or mortgagor (borrower) defaults.

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

Mortgage means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan or by which a mortgagor grants mortgagee a lien on real estate.

Mortgagee means a lender that has taken a lien on real property to secure a loan.

Mortgagor means an owner of real property that has granted a lien on real property to secure a loan.

Neighborhood standard means those conditions that are present on a simple majority of properties within a three-hundred-foot radius of an individual property. A property that is the subject of a neighborhood standard comparison, and any other abandoned property within the three-hundred-foot radius, shall not be counted toward the simple majority.

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

Owner means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property excluding governmental agencies.

Owner of record means the person having recorded title to the property.

Property means any unimproved or improved real property, or portion thereof, situated in the city and includes the buildings or structures located on the property regardless of condition.

Residential building means any improved real property, or portion thereof, situated in the city, designed, or permitted to be used for dwelling purposes, and shall include the buildings or structures located on such improved real property. This includes any real property being offered for sale, trade, transfer, or exchange as residential whether or not it is legally permitted and/or zoned for such use.

Secure or secured means such measures as may be directed by the city of Owosso building official or his or her designee that render the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/padlocking of gates, and the repair or boarding of doors, broken windows and/or other openings. In the case of broken windows, securing means the reglazing or boarding of the window. Boarding shall be completed or required. In addition, secure or secured means closing and locking windows, doors (walk-through, sliding and garage), gates and any other opening of such size that it may allow a person to access the interior of a property and/or structure(s).

Trustee means the person, firm, or corporation holding a mortgage on a property.

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

Vacant means a building/structure that is not legally occupied.

Sec. 8-162. Registration.

Any beneficiary/trustee or mortgagee, who holds a mortgage on a property located within the city, shall perform an examination, to the extent permitted by law or under the mortgage, of the property that is the security for the mortgage, upon default by the trustor or mortgagor, within five (5) days after either filing a complaint for foreclosure (if foreclosure is by judicial action) or publishing a notice of foreclosure (if foreclosure is by advertisement). If the property is found to be vacant or shows evidence of vacancy, it is, by this article, deemed abandoned and the beneficiary/trustee or mortgagee shall, within ten (10) days of the examination, register the property with the city of Owosso building official or his or her designee on forms provided by the city.

If the property is occupied but remains in default, it shall be examined, to the extent permitted by law and the mortgage, by the beneficiary/trustee or mortgagee, or his designee, monthly until (1) the trustor, mortgagor or other party remedies the default or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the trustee shall, within ten (10) days of that examination, register the property with the city of Owosso building official or his or her designee on forms provided by the city.

In either case the registration shall contain the name of the beneficiary/trustee or mortgagee (corporation or individual), the direct street/office mailing address of the beneficiary/trustee or mortgagee (no P.O. boxes), a direct contact name and phone number for the beneficiary/trustee or mortgagee and, in the case of a corporation or out-of-area beneficiary/trustee or mortgagee,

the local property management company responsible for the security, maintenance, and marketing of the property. Registration fees will not be prorated.

An annual registration fee shall accompany the registration form. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations and fees are due January 1 of each year and must be received no later than January 31 of the year due.

This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage or mortgagee involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. Such properties shall be registered with the city in accordance with the terms of this section upon transfer even if occupied at the time of transfer.

Properties subject to this article shall remain under the annual registration requirement, security, and maintenance standards of this section as long as they remain vacant.

A person, firm, or corporation that has registered a property under this article must report any change of information contained in the registration to the city of Owosso building official within ten (10) days of the change.

Sec. 8-163. Maintenance requirements.

Vacant and abandoned properties subject to this section shall be, in comparison to the neighborhood standard, kept free of weeds, dry bush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, 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.

The property shall be maintained 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.

Visible front and side yards shall be landscaped and maintained to the neighborhood standard at the time registration was required. Landscape 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. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, indoor-outdoor carpet or any similar material.

Maintenance includes but is not limited to regular watering, irrigation, cutting, pruning, and moving of required landscape and removal of all trimmings.

Pools and spas shall be either kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry or drained and covered. In either case properties with pools and/or spas must comply with the minimum security fencing requirements of the state of Michigan.

Adherence to 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.

Sec. 8-164. Security requirements.

Properties subject to this section shall be secured so as not to be accessible to unauthorized persons. If the property is owned by a corporation and/or out-of-area beneficiary/trustee/owner/mortgagee, 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.

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 article.

Sec. 8-165. Additional authority.

In addition to the enforcement remedies established in this article or other chapters of the *Code of Ordinances*, the city of Owosso building official or his or her designee shall have the authority to require the beneficiary/trustee/owner/mortgagor/mortgagee and/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/all door, window, 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 arrest the decline of the property.

Sec. 8-166. Fees.

The fee for registering an abandoned residential property shall be set by resolution of the city of Owosso.

Sec. 8-167. Failure to secure and maintain.

If a property has not been maintained or secured, the city and/or its contracted agent may maintain and/or secure the property and assess costs to the owner, beneficiary or trustee.

Sec. 8-168. Re-occupancy.

A registered property may not be occupied until all outstanding costs, assessments and/or liens owed to the city have been paid in full.

An abandoned and/or vacant residential structure registered under this ordinance shall not be re-occupied until a copy of a home inspection report by a certified building official in the State of Michigan, a registered building inspector in the state of Michigan, or a home inspection company of the buyers choice that is certified by MAHI, ASHI, AHIT, NAHI, or NACHI has been signed by the buyer and a copy delivered to the city.

Sec. 8-169. Violation/abatement.

Violations of this article shall be treated as a strict liability offense regardless of intent. Violations of this article may be enforced as allowed in this chapter. Alternatively, at the sole discretion of the city, the city may issue to the beneficiary/trustee/owner/mortgagor/mortgagee and/or owner of record a notice to abate. The notice to abate shall include:

- (1) The nature and location of the violation;
- (2) The time within which the violation must be abated;
- (3) Notice that the city may act to abate the violation if it is not abated by the owner within a reasonable time stated in the notice, but which may not exceed fifteen (15) days for identified hazards;
- (4) Notice that the cost of such action by the city, plus an administrative fee, shall be a personal debt of the owner, which may be assessed as a lien against the property until paid; and
- (5) Notice that any refusal to allow the city to abate an uncorrected violation shall be a separate violation under this Code.

Sec. 8-170. Authorization for city abatement.

Upon failure of a beneficiary/trustee/owner/mortgagor/mortgagee and/or owner of record to abate a violation as ordered in a notice to abate, the city may abate the nuisance. This abatement may be performed by the city, by a contract vendor, or by other means determined by the city.

Sec. 8-171. Administrative fees.

The fees necessary for the administration of this article shall be established from time to time by resolution of the city council. Such administrative fees shall include the following:

- (1) Notice to abate;
- (2) Search warrant;
- (3) Contact request or warning of abatement action;
- (4) Warning letter;
- (5) Civil infraction preparation;
- (6) Additional inspections;
- (7) Vending;
- (8) Second and subsequent vending;
- (9) Vehicle removal;
- (10) Second and subsequent vehicle removal; and
- (11) Denied entry.

Sec. 8-172. Charge for costs.

When the city has abated a cited nuisance, the cost of abatement, plus any applicable administrative charges as established by city council resolution, shall be billed to the property owner or beneficiary/trustee/mortgagor/mortgagee. Such billing shall be a personal debt of the owner to the city, which may be assessed as a lien against the property, including interest thereon, until paid.

Sec. 8-173. Appeals.

Any person aggrieved by any of the requirements of this section may appeal to the Owosso Building Board of Appeals, provided that a written application for appeal is filed within twenty (20) days after the day the decision, notice, or order was served. An application for appeal shall be

based on a claim that the true intent of this Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code do not fully apply, the requirements of this Code are adequately satisfied by other means, or the strict application of any requirement of this Code would cause an undue hardship.

Sec. 8-174. Owner, unoccupied premises.

If a property is not in foreclosure but is otherwise vacant for a period of more than 180 days, the owner shall comply with all of the following:

- (1) Maintain the property in accordance with section 8-163 herein and article VI of this chapter.
- (2) Register the property in accordance with section 8-162
- (3) Responsible for the fee identified pursuant to section 8-166 herein.
- (4) Keep the property secure in accordance with sections 8-164 and 8-165 herein.
- (5) Not permit re-occupancy until all outstanding costs, assessments and/or liens owed to the city are paid in full.
- (6) If the owner leases or lets the property, the owner shall comply with article VII of this chapter in addition to the requirements herein.
- (7) Inspect the property in accordance with section 8-168.

Sec. 8-175. Exempt properties.

Properties currently registered with the City as a rental dwelling unit in accordance with Section VII of this Chapter are exempt from the *City of Owosso Abandoned or Foreclosed Property Registration and Maintenance Ordinance*.

Sec. 8-176. Penalty.

Violation of this article is a civil infraction wherein a fine of up to five hundred dollars (\$500.00) may be assessed for each violation.

Section 2: Severability.

If any section, subsection, sentence, clause or phrase of this article is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this article. The city hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 3: Effective Date.

This ordinance shall take effect February 26, 2012.

Section 4: Inspection.

This Ordinance may be purchased or inspected in the City Clerk's Office Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion supported by Councilperson Cook.

Roll Call Vote.

AYES: Councilpersons Eveleth, Fox, Bailey, Mayor Pro-Tem Popovitch, Councilperson Cook and Mayor Frederick.

NAYS: Councilperson Erfourth.

I hereby certify that the foregoing document is a true and complete copy of action taken by the Owosso City Council at the regular meeting of February 6, 2012.



Amy K. Kirkland, City Clerk