

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE CREATING CITY CODE**

**- CHAPTER 70.2 -**

**- REGISTRATION OF FORECLOSURE AND VACANT PROPERTIES-**

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF DECATUR, ILLINOIS:

WHEREAS, the City Council desires to protect the public health, safety, and welfare of the citizens of the incorporated area of the City of Decatur and maintain a high quality of life for the citizens of the City through the maintenance of structures and properties in the City; and

WHEREAS, the Council recognizes properties subject to foreclosure action or foreclosed upon and vacant properties (hereinafter referred to as “Registrable Properties”) located throughout the City lead to a decline in community and property value; create nuisances; lead to a general decrease in neighborhood and community aesthetic; create conditions that invite criminal activity; and foster an unsafe and unhealthy environment; and

WHEREAS, the Council has already adopted property maintenance codes to regulate building standards for the exterior of structures and the condition of the property as a whole; and

WHEREAS, the Council recognizes in the best interest of the public health, safety, and welfare a more regulated method is needed to discourage Registrable Property owners and mortgagees from allowing their properties to be abandoned, neglected or left unsupervised; and

WHEREAS, the Council has a vested interest in protecting neighborhoods against blight caused by Registrable Property and concludes that it is in the best interests of the health, safety, and welfare of its citizens and residents to impose registration requirements of Registrable Property located within the City to discourage Registrable Property owners and mortgagees from allowing their properties to be abandoned, neglected or left unsupervised.

WHEREAS, the Council finds that the implementation of the following changes and additions will assist the City in protecting neighborhoods from the negative impact and conditions that occur as a result of vacancy, absentee ownership, and lack of compliance with existing City regulations and laws.

Section 1. That the City Code of Decatur be amended by creating and enacting Chapter 70.2 entitled Registration of Foreclosure and Vacant Property and shall provide as follows:

**-CHAPTER 70.2-**  
**-REGISTRATION OF FORECLOSURE AND VACANT PROPERTY-**

**1. PURPOSE AND INTENT.**

It is the purpose and intent of the Council to establish a process to address the deterioration, crime, and decline in value of City neighborhoods caused by property with foreclosing or foreclosed mortgages located within the City, and to identify, regulate, limit and reduce the number of these properties located within the City. It has been determined that owner-occupied structures are generally better maintained when compared to vacant structures, even with a diligent off-site property owner. Vacant structures or structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintained, which contribute to blight, declined property values, and have a negative impact on social perception of the residential areas where they are located. It is the Council's further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are in foreclosure or foreclosed, and to provide a mechanism to avert foreclosure actions through timely intervention, education, or counseling of property owners.

**2. DEFINITIONS**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

***Default*** shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

***Enforcement Officer*** shall mean any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector, building inspector, or other person authorized by the City to enforce the applicable code(s).

***Evidence of Vacancy*** shall mean 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 may include, but are not limited to: overgrown and/or dead vegetation; past due utility notices and/or disconnected utilities; accumulation of trash junk or debris; abandoned vehicles, auto parts and/or materials; the absence of furnishings and/or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers and/or mail; statements by neighbors, passers-by, delivery agents or government agents; and/or the presence of boards over doors, windows or other openings in violation of applicable code.

***Foreclosure or Foreclosure Action*** shall mean the legal process by which a mortgagee, or other lien holder, terminates or attempts to terminate a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. The legal process is not concluded until the property obtained by the

mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

***Mortgagee*** shall mean the holder of an indebtedness or oblige of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder, including but not limited to, trustees; mortgage servicing companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the holder's rights, interests or obligations under the mortgage agreement; or any other person or entity with the legal right to foreclose on the real property, excluding governmental entities.

***Owner*** shall mean every person, entity, or mortgagee, who alone or severally with others, has legal or equitable title to any real property as defined by this Chapter; has legal care, charge, or control of any such property; is in possession or control of any such property; and/or is vested with possession or control of any such property. An owner includes the guardian of the estate of such person and the executor or administrator of the estate of such person if ordered to take possession of real property by a court. The property manager shall not be considered the owner.

***Property Manager*** shall mean any party designated by the owner as responsible for inspecting, maintaining and securing the property as required in this Chapter.

***Real Property*** shall mean any residential or commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the City limits.

***Registrable Property*** shall mean:

- (a) Any real property located in the City, whether vacant or occupied, that is encumbered by a mortgage subject to an ongoing foreclosure action by the mortgagee or trustee, has been the subject of a foreclosure action by a mortgagee or trustee and a judgment has been entered, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a foreclosure property as "registrable" shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm's length transaction or the foreclosure action has been dismissed; or
- (b) Any property that is vacant for more than sixty (60) days and has or has had property maintenance violations in previous 12 months or lacks utilities and services.

***Registry*** shall mean an electronic database of searchable real property records, used by the City to allow mortgagees and owners the opportunity to register properties and pay applicable fees as required in this Chapter.

***Semi-Annual Registration*** shall mean six (6) months from the date of the first action that requires registration, as determined by the City, or its designee, and every subsequent six (6) months. The

date of the initial registration may be different than the date of the first action that required registration.

***Utilities and Services*** shall mean any utility and/or service that is essential for a building to be habitable and/or perform a service necessary to comply with all City codes. This includes, but is not limited to, electrical, gas, water, sewer, lawn maintenance, and garbage services.

***Vacant*** shall mean any parcel of land in the City that contains any building or structure that is not lawfully occupied.

### **3. APPLICABILITY AND JURISDICTION**

This chapter applies to foreclosing, foreclosed, and vacant property within the City.

### **4. ESTABLISHMENT OF A REGISTRY**

Pursuant to the provisions of chapter, the City, or its designee, shall establish a registry cataloging each Registrable Property within the City, containing the information required by this Chapter.

### **5. INSPECTION AND REGISTRATION OF REAL PROPERTY UNDER FORECLOSURE**

- (a) Any mortgagee who holds a mortgage on real property located within the City shall perform an inspection of the property upon default by the mortgagor as evidenced by the filing of a foreclosure action.
- (b) Property inspected pursuant to subsection (a) above that remains in foreclosure shall be inspected every thirty (30) days by the mortgagee or mortgagee's designee. If an inspection shows a change in the property's occupancy status the mortgagee shall, within ten (10) days of that inspection, update the occupancy status of the property registration.
- (c) Within ten (10) days of the date any mortgagee files a foreclosure action, the mortgagee shall register the real property with the City Registry, and, at the time of registration, indicate whether the property is vacant, and if so shall designate in writing a property manager to inspect, maintain, and secure the real property subject to the mortgage under a foreclosure action. A separate registration is required for each property under a foreclosure action, regardless of whether it is occupied or vacant.
- (d) Initial registration pursuant to this section shall contain at a minimum the name of the mortgagee, the mailing address of the mortgagee, e-mail address, telephone number and name of the property manager and said person's address, e-mail address, and telephone number.
- (e) At the time of initial registration each registrant shall pay a non-refundable semi-annual registration fee of five hundred dollars (\$500.00) for each property. Subsequent non-refundable semi-annual renewal registrations of properties and fees in the amount of three

hundred fifty dollars (\$350.00) are due within ten (10) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to defaulted properties, (3) City neighborhood revitalization initiatives, and (4) for any related purposes as may be adopted in policy by the City Council. None of the funds provided for in this section shall be utilized for the legal defense of foreclosure actions.

- (f) If the mortgage and/or servicing on a Registrable Property is sold or transferred, the new mortgagee is subject to all the terms of this Chapter. Within ten (10) days of the transfer, the new mortgagee shall register the property or update the existing registration. The previous mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that mortgagee's involvement with the Registrable Property.
- (g) If the mortgagee sells or transfers the Registrable Property in a non-arm's length transaction to a related entity or person, the transferee is subject to all the terms of this Chapter. Within ten (10) days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the mortgagee was at the time registration was required, including, but not limited to, unregistered periods during the foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous mortgagee will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that mortgagee's involvement with the foreclosed property.
- (h) If the foreclosing or foreclosed property is not registered, or the registration fee is not paid within thirty (30) days of when the registration or renewal is required pursuant to this section, a late fee equivalent to ten percent (10%) of the semi-annual registration fee shall be charged for every thirty-day period (30), or portion thereof, the property is not registered and shall be due and payable with the registration.
- (i) This section shall also apply to properties that have been the subject of a foreclosure sale where an order has been entered transferring title to the mortgagee as well as any properties transferred to the mortgagee under a deed in lieu of foreclosure or by any other legal means.
- (j) Properties subject to this section shall remain subject to the semi-annual registration requirement, and the inspection, security, and maintenance standards of this section as long as the property remains Registrable Property.
- (k) Failure of the mortgagee and/or property owner of record to properly register or to modify the registration to reflect a change of circumstances as required by this ordinance is a violation of this Chapter and shall be subject to enforcement by any of the enforcement means available to the City.
- (l) If any property is in violation of this Chapter, the City may take any legal or equitable action to ensure compliance with and to bring or keep the property in to compliance with

this Chapter. The mortgagee shall be liable for the costs of such obligation and actions and may result in a lien upon the property.

**6. INSPECTION AND REGISTRATION OF REAL PROPERTY THAT IS VACANT BUT NOT SUBJECT TO A MORTGAGE IN FORECLOSURE**

- (a) Any owner of vacant property located within the City shall within fifteen (15) days after the property becomes vacant, register the real property with the City Registry.
- (b) Initial registration pursuant to this section shall contain at a minimum the name of the owner, the mailing address of the owner, e-mail address, and telephone number of the owner, and if applicable, the name and telephone number of the property manager and said person's address, e-mail address, and telephone number.
- (c) At the time of initial registration each registrant shall pay a non-refundable semi-annual registration fee of two hundred dollars (\$200.00) for each vacant property. Subsequent non-refundable semi-annual renewal registrations of vacant properties and fees in the amount of three hundred fifty dollars (\$350.00) are due within ten (10) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to vacant properties, (3) City neighborhood revitalization initiatives, and (4) for any related purposes as may be adopted in policy by the City Council.
- (d) If the property is sold or transferred, the new owner is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the new owner shall register the vacant property or update the existing registration. The previous owner(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that owner's involvement with the vacant property.
- (e) If the vacant property is not registered, or either the registration fee or the semi-annual registration fee is not paid within thirty (30) days of when the registration or semi-annual registration is required pursuant to this section, a late fee shall be equivalent to ten percent (10%) of the semi-annual registration fee shall be charged for every thirty (30) day-period, or portion thereof, the property is not registered and shall be due and payable with the registration. This section shall apply to the initial registration and renewal registrations required by subsequent owners of the vacant property.
- (f) Properties subject to this section shall remain subject to the semi-annual registration requirement, and the inspection, security, and maintenance standards of this section as long as the property is vacant.
- (g) Failure of the owner to properly register or to modify the registration to reflect a change of circumstances as required by this ordinance is a violation of this Chapter and shall be subject to enforcement by any of the enforcement means available to the City.

- (h) If any property is in violation of this Chapter, the City may take any legal or equitable action to ensure compliance with and to bring or keep the property in to compliance with this Chapter. The owner shall be liable for the costs of such obligation and actions and may result in a lien upon the property.
- (i) Properties actively registered as a result of this section are not required to be registered again pursuant to the foreclosure mortgage property section.

## **7. MAINTENANCE REQUIREMENTS**

- (a) Properties subject to this Chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper 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.
- (b) Registrable Property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- (c) Front, side, and rear yards, including landscaping, of Registrable Property shall be maintained in accordance with the current applicable codes at all times.
- (d) Registrable Property yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- (e) Maintenance shall include, but not be limited to, irrigation system, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- (f) Pools and spas of shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s) of the City.
- (g) Failure of the mortgagee, owner, and transferees to properly maintain the property as required by this Chapter may result in a violation of the applicable code(s) and issuance of a citation or notice of violation in accordance with the applicable code of the City. Pursuant to a finding and determination by a court of competent jurisdiction, the City may take the necessary action to ensure compliance with this section.
- (h) In addition to the above, the property is required to be maintained in accordance with the applicable adopted codes of the City.

## **8. SECURITY REQUIREMENTS**

- (a) Properties subject to these Sections shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

- (b) A “secure manner” shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates, and other openings of such size that may allow a child or animal to access the interior of the property or structure must be repaired. Broken windows or doors shall be permanently repaired or secured temporarily utilizing pressure-treated or painted wood. The securing of property by use of wood is only a temporary solution to prevent unauthorized entry into a property.
- (c) If a property is Registrable, and the property has become vacant or blighted, a property manager shall be designated by the mortgagee and/or owner to perform the work necessary to bring and keep the property in compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this Chapter, and any other applicable laws.
- (d) In addition to the above, the property is required to be secured in accordance with the applicable adopted codes of the City.
- (e) When a property subject to this Chapter becomes vacant, it shall be posted with the name and twenty-four (24) hour contact telephone number of the property manager. The property manager shall be available to be contacted by the City Monday through Friday between 9:00 a.m. and 5:00 p.m., federal legal holidays excepted. The sign shall be placed in a window facing the street and shall be visible from the street. The posting shall contain minimally, the following language with supporting information:

THIS PROPERTY IS MANAGED BY \_\_\_\_\_.  
AND IS INSPECTED ON A REGULAR BASIS. \_\_\_\_\_.  
THE PROPERTY MANAGER CAN BE CONTACTED \_\_\_\_\_.  
BY TELEPHONE AT \_\_\_\_\_.  
OR BY EMAIL AT \_\_\_\_\_.

- (f) The posting required in subsection (e) above shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so that it is visible from the street or if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visible from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.
- (g) Failure of the mortgagee and/or property owner of record to properly inspect and secure a property subject to this Chapter, and post and maintain the signage noted in this section, is a violation and shall be subject to enforcement by any of the enforcement means available to the City. The City may take the necessary action to ensure compliance with this section, and recover costs and expenses in support thereof.



## **9. PROVISIONS SUPPLEMENTAL**

The provisions of this Chapter are cumulative with and in addition to other available remedies. Nothing contained in this Chapter shall prohibit the City from collecting on fees, fines, and penalties in any lawful manner; or enforcing its codes by any other means, including, but not limited to, injunction, abatement, or as otherwise provided by law or ordinance.

## **10. REGISTRABLE PROPERTY DESIGNATION RECONSIDERATION**

Mortgagees and owners may request reconsideration of the designation of the property as registrable property. The request must be in writing and must be submitted to the Community Development Director or their designee within seven (7) days of the date of the mailing of the notice of designation. The request shall contain a complete statement of the reasons the mortgagee or owner disputes the designation and shall set forth specific facts in support of the request. The Community Service Director shall send notice of their decision within seven (7) days of receipt of the request. The filing of a request for reconsideration stays the time required for registration until the Director sends the notice of decision.

## **11. ADDITIONAL AUTHORITY**

- (a) The registration of a property shall not preclude action by the City to take any other action against the property pursuant to other provisions of the City Code, or applicable local, state or federal laws.
- (b) Nothing herein contained shall prohibit the City from immediately condemning a property or taking other immediate action upon a determination that the property is a public nuisance or poses an immediate danger to the public, health, safety or welfare as provided for in the City Code or applicable local, state and federal laws.
- (c) The City may contract with an entity to implement this Chapter, and, if so, any reference to the enforcement officer herein shall include the entity the City contract with for that purpose.
- (d) In order to cause the purpose, intent, and provisions of this Chapter and the Code adopted thereby to be carried out and administered, and to facilitate the same, the City Manager be, and he is hereby authorized to cause directives, interpretations and rules not in conflict with said provisions, to be promulgated and enforced.

## **12. SEVERABILITY**

It is hereby declared to be the intention of the City that if the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

### 13. PENALTIES

Any person, firm or corporation who shall violate any of the provisions hereof, shall be fined not less than One Hundred Fifty Dollars (\$150.00) nor more than Five Hundred (\$500.00) for each offense, and every day on which a violation occurs or continues shall be considered a separate offense. The City may seek remedies which include corrective action, prohibitions or revocations as a part of its relief.

Section 2. That the City Clerk be, and she is hereby, authorized and directed to cause the provisions hereof to be appropriately set out in the City Code and to cause the same to be published in pamphlet form according to law.

PRESENTED, PASSED, APPROVED AND RECORDED this 18<sup>th</sup> day of May, 2020.

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JULIE MOORE WOLFE, MAYOR

ATTEST:

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CITY CLERK

PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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CITY CLERK